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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 37

DAVID A. WRIGHT, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED APRIL 30, 1937

CERTIORARI GRANTED JUNE 1, 1937

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 939

DAVID A. WRIGHT, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 261-A

DAVID A. WRIGHT, Plaintiff,

v.

THE UNITED STATES, Defendant

I. PETITION TO REINSTATE, REOPEN, REHEAR, AND READJUDICATE (UNDER A SPECIAL ACT OF CONGRESS.)—Filed September 14, 1936

To the Honorable, the Chief Justice and Associate Justices of the Court of Claims:

The plaintiff, David A. Wright, respectfully represents as follows:

I

Plaintiff is a citizen of the United States. At the time of the institution of this suit on September 10, 1921 and, at the [fol. 2] time of the transactions set forth in his petition filed herein on September 10, 1921, he was a resident of Chicago, Illinois. Since September, 1929, he has been and is now a resident of Winona, Missouri.

II

On Friday, April 24, 1936, the Senate of the United States presented to the President of the United States the enrolled bill, S. 713, granting jurisdiction to the Court of Claims to hear the case of David A. Wright, which had passed both Houses of Congress and been signed by the Speaker of the House of Representatives and the President of the Senate.

III

On Monday, May 4, 1936, the Senate of the United States took a recess until noon Thursday, May 7, 1936. During said period—May 4 to May 7, 1936—the House of Representatives of the United States was in session.

IV

During said recess of the Senate, the President of the United States sent, by messenger, the bill, S. 713, together with a message dated May 5, 1936, addressed to the Senate of the United States giving his objections to said bill. The bill and message were not returned to the Senate of the United States, but were delivered to and left with the Secretary of the Senate.

V

On May 7, 1936, the Secretary of the Senate addressed [fol. 3] and delivered to the Senate the following letter with which he transmitted the papers therein mentioned.

"United States Senate,
Washington, May 7, 1936.

Hon. John N. Garner, President of the Senate.

My Dear Mr. President:

On Friday, April 24, 1936, the Committee on Enrolled Bills of the Senate presented to the President of the United States the enrolled bills (S. 713) granting jurisdiction of the Court of Claims to hear the case of David A. Wright, and (S. 929) for the relief of the Southern Products Co., which had passed both Houses of Congress and been signed by the Speaker of the House of Representatives and the President of the Senate.

The Senate, at 3:25 p. m. Monday, May 4, 1936, took a recess until 12 noon on Thursday, May 7, 1936.

During the interim the President of the United States sent by messenger two messages addressed to the Senate, each dated May 5, 1936, giving his reasons for not approving, respectively, Senate bill 713 and Senate bill 929. The Senate not being in session on the last day which the President had for the return of these bills under the provisions of the Constitution of the United States, in order to protect the interests of the Senate, so that it might have the opportunity to reconsider the bills, I accepted the messages, and I now present to you the President's veto messages, with the accompanying papers, for disposition by the Senate.

Sincerely yours, Edwin A. Halsey, Secretary of the Senate."

On the same date, May 7, 1936, the President of the Sen-
[fol. 4] ate laid before the Senate the Secretary's letter of May 7, 1936, and also the message of the President of the United States which message was read, and, with the accompanying bill, S. 713, referred to the Committee on Claims of the Senate.

VI

Said bill, S. 713, originated in the Senate of the United States. No action, other than that set forth in Paragraph V above, has ever been taken by the Senate of the United States on said returned bill nor on the President's message thereon. No action, other than that set forth hereinbefore, has ever been taken by the President of the United States on or with reference to said bill, S. 173, and the President never returned the said bill with his objections to the Senate of the United States and said Act became and is a law of the United States.

VII

This petition is filed under authority of and pursuant to the provisions of said Act of Congress (S. 713), being "An Act granting jurisdiction to the Court of Claims to hear the case of David A. Wright," which provides as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims be, and hereby is, given jurisdiction to reinstate, reopen, and rehear the case of David A. Wright, of Winona, Missouri, against the United States, numbered 261-A in said court, and upon the pleadings, evidence, and other proceedings in that cause, and such other
[fol. 5] proceedings, if any, as the Court may deem necessary or proper, to readjudicate the same and determine the amount of costs or expenditures, if any, which the said David A. Wright may have expended or incurred in 1918 in the rehabilitation of a manufacturing plant (commonly called the Allis-Chalmers Plant) at 1150 Washtenaw Avenue, Chicago, Illinois, and in the beginning of production of heavy-duty lathes, to meet the needs, or the then-anticipated needs, of the Ordnance Department for any gun-relining or gun manufacturing project initiated and under way in the Ordnance Department of the United States Army, in reliance in good faith upon any promise or assurance given him by Major Charles D. Westcott, Ordnance Department,

United States Army, or Howard Abbot, an engineer in the plant section of the production division of the Ordnance Department, that the said David A. Wright would receive a contract, or contracts, for the manufacture of heavy-duty lathes that would absorb such costs or expenditures, notwithstanding such Ordnance Department projects may have been contingent upon the continuance of the war and may have been abandoned because of the signing of the armistice of November 11, 1918, and notwithstanding section 3744 of the Revised Statutes: Provided, That the Court of Claims shall be of opinion that the said David A. Wright made or incurred such expenditures in reliance in good faith upon the belief that Major Westcott or Mr. Abbott possessed the authority to make such promise or assurance on behalf of the Ordnance Department and that he was justified in doing so under the circumstances."

Wherefore, plaintiff prays this Court to reinstate, reopen and rehear this case and upon the pleadings, evidence, and other proceedings in this cause and such other proceedings, [fol. 6] if any, as this Court may deem necessary or proper, to readjudicate the same in accordance with said Act of Congress.

David A. Wright, Plaintiff, by Ashby Williams, 815 Fifteenth Street, N. W., Washington, D. C., Attorney for Plaintiff. James J. Lenihan, 516 Investment Building, Washington, D. C., Counsel.

Duly sworn to by David A. Wright. Jurat omitted in printing.

[fol. 7] II. DEFENDANT'S OPPOSITION TO PLAINTIFF'S PETITION TO REINSTATE, REOPEN, REHEAR, AND READJUDICATE—October 15, 1936

The defendant opposes plaintiff's petition to reinstate, reopen, rehear, and readjudicate the above-entitled case upon the grounds hereinafter set forth:

1. That all claims of David A. Wright, including that docketed as 261-A, were heard, determined, and finally adjudicated by this Court on April 13, 1925 (60 C. Cls. 519; 60 C. Cls. 546).

2. That Enrolled Bill S. 713, passed by both Houses of Congress, purporting to confer special jurisdiction upon this Court, was vetoed by the President and returned to the Senate through duly recognized official channels during the interim of the Senate's temporary recess and said message of veto was received, acted upon, and referred by the said body to the Senate Committee on Claims, all within the time and in the manner prescribed by Article 1, Section 7, Clause 2, of the Constitution of the United States.

3. Or, in the alternative, if the transmission of Enrolled Bill S. 713 to the Secretary of the Senate is not construed as [fol. 8] a transmission to the Senate within the meaning of Article 1, Section 7, Clause 2, of the Constitution of the United States, then since the Senate was not in session on May 5, 1936, and within the full ten days of the submission of Enrolled Bill S. 713 to the President, the Bill failed to become a law. (See Pocket Veto Case, 66 C. Cls. 26; 279 U. S. 655, 679.)

4. That said Enrolled Bill S. 713 was not passed and enacted into law over the said veto as provided by said Constitutional provision.

5. That said Enrolled Bill S. 713, even had it been approved by the President and enacted into law, would be without valid force and effect and would be contrary to the spirit of the Constitutional provisions prohibiting encroachment by the Legislative upon the Judicial branch concerning the conduct and adjudication of a "Case at Law", the judicial discretion respecting which matters are reserved by the Constitution to be exercised by the Courts alone.

For the reasons stated the petition of the plaintiff to reinstate, reopen, rehear, and readjudicate should be denied.

Respectfully submitted, James W. Morris, Assistant Attorney General. P. M. Cox, Henry Fischer, Attorneys.

[fol. 9] III. ARGUMENT AND SUBMISSION

On January 11, 1937, the plaintiff's petition to reinstate, reopen, rehear and readjudicate was argued and submitted by Mr. James J. Lenihan, for plaintiff, and by Mr. Henry Fischer, for defendant.

IV. Order Overruling Plaintiff's Petition

It is Ordered this 8th day of February, A. D., 1937, that the plaintiff's petition to reinstate, reopen, rehear and re-adjudicate be and the same is hereby overruled.

[fol. 10] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 41,479. Court of Claims. Term No. 939. David A. Wright, petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed April 30, 1937. Term No. 939, O. T., 1936.

[fol. 11] Supreme Court of the United States

Order Allowing Certiorari—Filed June 1, 1937

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S
FILED
APR 30 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. [redacted] 37

DAVID A. WRIGHT,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

ASHBY WILLIAMS,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 939

DAVID A. WRIGHT,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Your petitioner, David A. Wright, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case.

Question Presented.

Whether a Bill originating in the Senate of the United States, passed by both Houses of the Congress and duly presented to the President became a law of the United States without the signature and approval of the President when the same was, on the tenth day (Sundays excepted) after presentation to him, delivered by the President to the Secretary of the Senate without his signature and with his objections thereto, the House of Representatives being in session and the Senate being in recess on said tenth day.

Reasons for Granting the Writ.

1. The decision of the Court of Claims is on a question of substance relating to the construction and application of Clause 2, Section 7, Article I of the Constitution of the United States which has not been, but should be, settled by this Court. This Court has never decided the question of whether a Bill becomes a law without the President's signature when he is not prevented from returning it within the constitutional time limit by reason of the adjournment of the Congress, but may be prevented from returning it to the House in which it originated on the tenth day after presentation by reason of a recess of such House.

2. The decision of the Court of Claims is on a question of general importance in that it is vital to the public to know whether, in the circumstances here presented, a Bill, not approved by the President, is law. Heretofore it has been the settled and unbroken Legislative and Executive construction that a Bill not approved and not returned by the President in the time and manner prescribed by the Constitution fails to become a law only where its return has been prevented by the adjournment of both Houses of Congress, and never where its return was prevented by the adjournment or recess of the House alone in which the Bill originated.

3. The decision is in conflict with the plain, unambiguous provisions of Clause 2, Section 7, Article I of the Constitution in that it is only in case the President is prevented by an adjournment of "the Congress" from returning the Bill that it does not become a law and not in case the President may be prevented by an adjournment or recess of *one House of Congress.*

4. The decision is in conflict with the decision of this Court in *The Pocket Veto Case,* 279 U. S. 655. In that case, this Court held that the Bill must be returned to the House in which it originated *in session* and that a delivery to the Secretary of the Senate, as in this case, or to the Clerk of the House of Representatives does not fulfill the constitutional requirement.

WHEREFORE, it is respectfully submitted that the petition should be granted.

ASHBY WILLIAMS,
815 Fifteenth St., N. W.,
Washington, D. C.;
JAMES J. LENIHAN,
516 Investment Bldg.,
Washington, D. C.;
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

The Court of Claims rendered no opinion (R. 6).

Jurisdiction.

The Court of Claims entered judgment dismissing the petition on February 8, 1937 (R. 6). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

Statutes Involved.

Section 1, Article I of the Constitution (U. S. C. A., Constitution, Part 1, p. 29):

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Clause 2, Section 7, Article I of the Constitution (U. S. C. A., Constitution, Part 1, p. 32):

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting

for and against the Bill shall be entered on the Journal of each House respectively. *If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law".*

Statement.

A Bill of Congress (S. 713—74th Congress, 1st session), which originated in the Senate (R. 3) and which had duly passed both Houses of Congress (R. 1) conferred jurisdiction on the Court of Claims to reinstate, reopen, rehear, and readjudicate the claim of petitioner against the United States (R. 3).

The said Bill was presented by Congress to the President on April 24, 1936 (R. 1).

Tuesday, May 5, 1936, was the tenth day (Sundays excepted) after the presentation of the Bill to the President. On Monday, May 4, 1936, at 3:25 P. M., the Senate, under its constitutional right so to do (Cl. 4, Sec. 5, Art. I), took a recess until noon Thursday, May 7, 1936 (R. 1), the House of Representatives being in session during said recess of the Senate (R. 1).

During such recess of the Senate the President, by a messenger, delivered said Bill and his objections thereto in writing to the Secretary of the Senate, and on May 7, 1936, when the Senate reconvened after the aforesaid recess, the Secretary of the Senate addressed a letter to the Vice-President advising him of the delivery of said Bill and objections to him, and he, the said Secretary, enclosed therewith the unsigned Bill and the President's said objections (R. 2).

On the same day, May 7, 1936, the Vice-President laid before the Senate the Secretary's letter and the President's objections, and the same were read, and the said Bill S. 713

with the President's objections were referred to the Senate Committee on Claims (R. 3).

Under authority of said Act of Congress (S. 713), petitioner, on September 14, 1936, filed in the Court of Claims his petition to reinstate, reopen, rehear and readjudicate his said claim (R. 1), on October 15, 1936, respondent filed in said Court its opposition to said petition (R. 4), and on February 8, 1937, the Court of Claims entered its judgment dismissing the petition, without opinion (R. 6).

Specification of Errors.

The Court of Claims erred:

1. In failing to hold that delivery to the Secretary of the Senate of the unsigned Bill and the President's objections thereto was not a return of said Bill and objections to the Senate, the House in which the Bill originated.

2. In failing to hold that the President not having returned the Bill with his objections thereto to the Senate in session within ten days (Sundays excepted) and the President not having been prevented from returning the Bill by an adjournment of "the Congress", said Bill became law without the President's approval and signature.

3. In failing to hold that it is the adjournment of "the Congress" and not of one of the Houses thereof which must prevent the return of a Bill by the President in order that said Bill, not signed and approved by him, shall not become a law.

4. In failing to hold that said Bill, S. 713, is a law of the United States.

5. In dismissing the petition.

ARGUMENT.

I.

Delivery of the Bill and objections thereto to the Secretary of the Senate is not a return thereof to the Senate as required by the Constitution.

The constitutional requirement is that the President must return the Bill and his objections thereto to the House in which the Bill "shall have originated". The Bill originated in the Senate and was, therefore, returnable to the Senate.

But the Bill was not returned to the Senate but was delivered, with the objections, to the Secretary of the Senate. This Court has explicitly held that the return required by Clause 2, Section 7, Article I, of the Constitution must be to the House in which the Bill originated "in session" (*The Pocket Veto Case*, 279 U. S. 655). Accordingly, it was the constitutional requirement that this Bill, S. 713, be returned to the Senate "in session".

An examination of the Journals of the House and Senate from the 51st to the 74th Congress, both inclusive (1889-1936), shows that from 1889 to 1933 there was not a single instance of any President attempting to return a bill to either House by the delivery of the bill to any officer of such House, but that the uniform practice was for the President's Secretary or representative to be admitted into the Chamber of the House or Senate and, upon being introduced by the Door Keeper, *to address the presiding officer in open session and announce the message from the President.* This examination also shows that during the period 1933-1936 the same practice prevailed except in the four following instances, involving four private relief bills all originating in the Senate, in which the President attempted to return the bills to the Senate by a delivery thereof to the

Secretary of the Senate, namely: *S. 1724*, 73 Cong., 2 sess. (Senate Journal 199), which was reintroduced in the 74 Cong., 2 sess., as S. 427 and passed and approved by the President (Senate Journal 309); *S. 694*, 74 Cong., 1 sess. (Senate Journal 490), which forms the basis of a pending suit in the Court of Claims; *S. 713*, 74 Cong., 2 sess. (Senate Journal 271), which forms the basis of this suit; and *S. 929*, 74 Cong., 2 sess. (Senate Journal 271).

II.

The Congress of the United States is both Houses thereof and cannot be one house thereof.

That the Congress of the United States is composed of both the Senate and the House of Representatives and cannot consist of one of them is so obvious and settled as not to be open to debate.

In the very first sentence of the Constitution (Sec. 1, Article I), it is provided that the Congress of the United States "shall consist of a Senate and House of Representatives".

The preliminary draft of Clause 2, Section 7, Article I, as reported by the Committee on Detail on August 6, 1787, did not contain the words "the Congress" but the words "the Legislature", used precisely in the same sense that those words were used in the New York Constitution of 1777, from which the provision of the Federal Constitution was mainly derived. The legislature of New York consisted of two Houses—the Senate and House of Assembly. In the final draft of the Federal provision, reported on September 12, 1787, by the Committee on Style, the words "the Congress" were substituted for the words "the Legislature". (See *U. S.* v. *Weil*, 29 Ct. Cl. 523, 538; *Charles Warren, "The Making of the Constitution,"* p. 384, 686.)

In the expression "the Congress by their adjournment" the modifying possessive adjective and verb are both in

the plural, indicating, on the part of the Committee on Style, careful diction, coordinate thought and a clear intent that "the Congress" should be understood in the plural sense as denoting the concurrent adjournment of the two Houses of the National Legislature just as the words "the Legislature by their adjournment" as used in the New York Constitution meant the adjournment of the whole law making power of that State.

This is further emphasized by the fact that while the "return" of the bill was to be to the particular House in which it originated the "adjournment" referred to in the same provision is not the adjournment of a particular House but the adjournment of "the Congress"—the whole Legislative power of the United States.

III.

Only when THE CONGRESS, by their adjournment, prevent a return does a Bill, not signed and objected to by the President, fail to become a law.

As pointed out hereinbefore, it is settled that the return of this Bill was, under the Constitution (Clause 2, Section 7, Article I), required to be made to the Senate "in session" and could not be made to the Secretary of the Senate for subsequent delivery by him to the Senate (*The Pocket Veto Case*, 279 U. S. 655).

Assuming that the President was prevented by the adjournment of the Senate from returning the Bill and his objections to the Senate "in session", the Bill became a law without the President's approval and signature, because there was no adjournment of "the Congress" which prevented the return and there is no provision in the Constitution that a Bill, disapproved by the President, shall not become a law when he is prevented from making a return to the body in which it originated by reason of a recess or adjournment of that body.

The language of Clause 2, Sec. 7, Article I is unambiguous. The President must be prevented from returning the Bill by an adjournment of "the Congress." The framers of the Constitution defined the term "the Congress" and provided that it should "consist of a Senate and House of Representatives." Furthermore, the framers anticipated not only adjournments of "the Congress" but also adjournments of either House thereof and, therefore, carefully provided (Clause 4, Sec. 5, Article I) that "neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days."

With knowledge, then, that one of the Houses of Congress could adjourn for three days during a session of Congress, the framers provided that only when "the Congress by their adjournment" prevented the return of a Bill should it fail to become a law. And nowhere did they provide that when one House of the Congress, by its adjournment, prevented the return of a Bill should it fail to become a law.

It is not likely that the framers of the Constitution intended to make the fate of an act of Congress depend upon any merely incidental or accidental act or omission of either House of Congress, of which the general public might or might not be aware, such as a sudden adjournment over for a day to attend a funeral or a failure of a quorum to attend on a particular day, or like incidental recess or adjournment. It is quite apparent the framers did not intend that an act of Congress which the President did not approve should expire by default unless its demise were attended by a *solemn, deliberate and concurrent adjournment of the entire Legislative Branch.*

The power to legislate is exclusively lodged in the Congress. The power of the President, with respect to legislation, is advisory only. The President does not possess the power to kill a single bill, but he does possess the power to deprive the Congress of the right to exercise legislative

power in respect to a particular bill unless a larger number are in favor thereof than is necessary in the ordinary exercise of legislative power. *While, therefore, not possessing the power to legislate, the President, nevertheless, possesses the power to restrict the exercise by Congress of the power to legislate.* The power of the President being, then, a restriction upon the exercise of the legislative power by Congress, the provisions of the Constitution with respect thereto should be construed to permit the exercise of the executive power only when and in the manner expressly granted and never in a case of doubt or uncertainty.

The only possible way in which it can be held that S. 713 failed to become a law is to write into the Constitution something which is not there and to do so notwithstanding that the framers knew and provided for three day adjournments of either House and yet did not provide that a Bill should not become a law when the President was prevented from returning it by the adjournment of the House in which it originated. To hold that S. 713 did not become a law means changing the words "unless the Congress by their adjournment prevent its return" (Clause 2, Sec. 7, Article I) to read "unless the Congress or the House in which it shall have originated by their adjournment prevent its return." This, we respectfully submit, cannot possibly be done without absolutely destroying every fundamental concept of constitutional interpretation.

In *Lake County* v. *Rollins*, 130 U. S. 662, involving construction of a provision of the Constitution of Colorado, counsel offered interpolations of the provision. This Court stated (p. 670):

> "We are unable to adopt the constructive interpolations ingeniously offered by counsel for defendant in error. Why not assume that the framers of the Constitution, and the people who voted it into existence, meant exactly what it says? At the first glance, its

> reading produces no impression of doubt as to the meaning. It seems all sufficiently plain; and in such case there is a well settled rule which we must observe. The object of construction, applied to a Constitution, is to give effect to the intent of its framers, and of the people in adopting it. This intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument."

In the case of *United States* v. *Sprague*, 282 U. S. 716, this Court stated (p. 731):

> "The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition."

IV.

The established practice has been that a Bill not approved and signed by the President becomes a law notwithstanding that a recess or adjournment of the House in which it originated prevented its return.

In *The Pocket Veto Case*, 279 U. S. 655, this Court held (p. 689) that:

> "Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions of this character."

and the Court discussed the construction placed upon the constitutional provision in reference to so-called "pocket vetoes".

Senate Bill 713 was not returned by the President to the Senate in the time and manner prescribed by the Constitution. *In contemplation of the Constitution that Bill has never been returned to the Senate. At the expiration*

of the constitutional 10 days the status of S. 713 became fixed by the Constitution and no subsequent action by either the President or Congress could change that status. The Bill either became a law by reason of the President's failure to constitutionally return it or it died in his hands as a so-called "pocket veto", on the theory that the recess or adjournment of the Senate alone prevented its return. Not only does the language of the Constitution forbid the latter conclusion, but legislative and executive interpretation throughout our entire history is opposed to it.

From the First Congress in 1789 to the end of the 74th Congress in 1936 there were a total of 601 so-called "pocket vetoes", 117 of which occurred during the first term of President F. D. Roosevelt (House Document No. 493, 70th Cong., 2nd Sess. discussed in "*Pocket Veto*" case *supra;* "Record of Veto Messages", 51st to 74th Cong., Government Printing Office, 1936; House and Senate Journals 1st to 74th Congresses).

As shown by the Journals of the Senate and House of Representatives, of these 601 so-called "pocket vetoes", 5 followed adjournments of Congress for the Christmas Holidays; 3 followed adjournments within the session during the administration of President Johnson; 247 followed *sine die* session adjournments; and 354 followed *sine die* adjournments of Congress.

In all instances, except where a Congress adjourned by reason of the expiration of its term, adjournments were pursuant to *resolutions concurred in by both Houses;* and in *no single instance* was there a "pocket veto" due to the recess or adjournment of one House alone within 10 days, Sundays excepted, of the presentation of the bill.

On the contrary, we cite the following instances where bills have been treated as laws without the President's approval when the House in which the bills originated was in recess or adjournment on the 10th day after presentation.

The Presidents and Congress regarded the status of these bills as fixed by the Constitution into laws, and they were published and enforced as laws, just as S. 713 became fixed into a law by the Constitution upon the failure of the President to make a constitutional return thereof with his objections.

(a) In the first session of the 54th Congress, three Senate bills, to wit: Nos. 1, 138 and 142, were presented to President Cleveland on January 28, 1896 (Senate Journal, 100). *On the 10th day thereafter,* namely, February 8, 1896, *the Senate was in recess* (Senate Journal 120). On February 10, 1896, President Cleveland's secretary, Mr. Pruden, addressed the presiding officer of the Senate and said, among other things, that these three bills "having been presented to the President of the United States January 28, 1896, and not having been returned by him to the House of Congress in which they originated within the ten days prescribed by the Constitution *have become laws without his approval*" (Senate Journal, 121).

(b) In the second session of the 54th Congress, Senate Bill 724 was presented to President Cleveland on January 5, 1897 (Senate Journal, 41). *On the 10th day thereafter,* namely, January 16, 1897, *the Senate was in recess* (Senate Journal, 54). On January 18, 1897, President Cleveland's secretary, Mr. Pruden, addressed the presiding officer of the Senate and said, among other things, that this bill "having been presented to the President on the 5th instant, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution *has become a law without his approval*" (Senate Journal, 57).

(c) In the third session of the 66th Congress, Senate Joint Resolution 191 was presented to President Wilson on December 17, 1920 (Senate Journal, 26). *On the 10th*

day thereafter, namely on December 29, 1920, *the Senate was in recess* (Senate Journal, 34). On January 7, 1921, President Wilson delivered a message to the Senate, by Mr. Sharkey, his secretary, saying, among other things, that this Joint Resolution "having been presented to me on December 17, 1920, and not having been approved by me or returned to the Senate within the 10 days prescribed by the Constitution, *has become a law without my approval"* (Senate Journal, 46).

(d) At the second session of the 53rd Congress House Bill 2582 was presented to President Cleveland on August 6, 1894. *On the 10th day thereafter,* August 17, 1894, *the House was in recess* (House Journal, 574). On August 20, 1894 (House Journal, 575), a message from President Cleveland announced that this bill "having been presented to the President on the 6th instant, *had become a law without his approval".*

(e) At the same session of Congress House Bill 6518 was presented to President Cleveland on August 7, 1894. *On the 10th day thereafter,* August 18, 1894, *the House was in recess* (House Journal, 574). On August 20, 1894, a message from President Cleveland announced that this bill "having been presented to the President on the 7th instant (August 7, 1894) *had become a law without his approval".*

(f) At the first session of the 54th Congress House Bills 3607 and 4526 were presented to President Cleveland on May 19, 1896. *On the 10th day thereafter,* May 30, 1896, *the House was in recess* (House Journal, 556). On June 3, 1896, a message from President Cleveland announced that these Bills "were presented to the President May 19, 1896, and not having been returned by him to the House of Congress in which they originated within the ten days prescribed by the Constitution *have become laws without his approval"* (House Journal, 569).

(g) At the second session of the 54th Congress House Bill 7777 was presented to President Cleveland on January 12, 1897. *On the 10th day thereafter,* January 23, 1897, *the House was in recess* (House Journal 104). On January 28, 1897 (House Journal, 122), a message from President Cleveland announced that this Bill "having been presented to the President on January 12, 1897, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution *has become a law without his approval*".

The legislative history of the 10 bills above cited is legally and constitutionally identical with the legislative history of Senate Bill 713, and it is apparent that if those bills became laws Senate Bill 713 also became a law. But we do not say that the 10 bills cited became laws because the Presidents thought they became laws or Congress treated them as laws any more than it can be said that Senate Bill 713 did not become a law because the President thought he had prevented it from becoming a law. Upon the failure of the Presidents to return all these bills in the constitutional period their status became fixed by the Constitution (*i.e.,* they were laws or not laws) and nothing the Presidents or Congress could do could change that status.

We cite the instances of the ten bills to show merely that Presidents Cleveland and Wilson and the Congresses to which the bills were returned believed that when a bill was not returned in the time prescribed by the Constitution it became a law although the House in which it originated was not in session on the 10th day, the Congress not having adjourned. And these executive and legislative precedents, coupled with the fact that not a single instance is found throughout our history of a so-called "pocket veto" due to the adjournment of one House of Congress alone, is such clear proof of long executive and legislative interpre-

tation as to be strongly persuasive of the meaning of the constitutional provision.

V.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the petition should be granted.

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IN THE

Supreme Court of the United States

October Term, 1937.

No. 37.

DAVID A. WRIGHT, *Petitioner,*

v.

THE UNITED STATES.

PETITIONER'S BRIEF FOR USE UPON ARGUMENT OF CASE.

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OPINION BELOW.

The Court of Claims rendered no opinion (R. 6).

JURISDICTION.

The Court of Claims entered judgment dismissing the petition February 8, 1937 (R. 6). This Court granted Writ of Certiorari June 1, 1937 (R. 6). The jurisdiction of this Court is invoked under section 3(b) of the Act of February 13, 1925.

STATUTES INVOLVED.

Section 1, Article I, of the Constitution:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Clause 2, Section 7, Article I, of the Constitution:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. *If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law*".

STATEMENT OF FACTS.

A Bill of Congress (74th Congress, 1st session), which originated in the Senate (R. 3) and was designated as S. 713, and which had duly passed both Houses of Congress (R. 1), conferred jurisdiction on the Court of Claims to reinstate, reopen, rehear, and readjudicate petitioner's claim against the United States (R. 3).

This Bill was presented by Congress to the President on April 24, 1936 (R. 1).

Wednesday, May 6, 1936, was the tenth day, Sundays excepted, after the presentation of the Bill to the President. On Monday, May 4, 1936, at 3:25 p.m., the Senate, under its constitutional right so to do (Cl. 4, sec. 5, art. I), took a recess until noon, Thursday, May 7, 1936 (R. 1); the House of Representatives being in session during said recess of the Senate (R. 1).

During such recess of the Senate the President, by a messenger, delivered said Bill, and his objections thereto in writing, to the Secretary of the Senate; and the Secretary of the Senate, on May 7, 1936, delivered to the Senate the following letter with which he transmitted the papers therein mentioned:

UNITED STATES SENATE,
Washington, May 7, 1936.

HON. JOHN N. GARNER,
President of the Senate.

My Dear Mr. President: On Friday, April 24, 1936, the Committee on Enrolled Bills of the Senate presented to the President of the United States the enrolled bills (S. 713) granting jurisdiction of the Court of Claims to hear the case of David A. Wright, and (S. 929) for the relief of the Southern Products Co., which had passed both Houses of Congress and been signed by the Speaker of the House of Representatives and the President of the Senate.

The Senate, at 3:25 p. m. Monday, May 4, 1936, took a recess until 12 noon on Thursday, May 7, 1936.

During the interim the President of the United States sent by messenger two messages addressed to the Senate, each dated May 5, 1936, giving his reasons for not approving, respectively, Senate bill 713 and Senate bill 929. The Senate not being in session on the last day which the President had for the return of these bills under the provisions of the Constitution of the United States, in order to protect the interests of the Senate so that it might have the opportunity to reconsider the bills, I accepted the messages, and I now present to you the President's veto messages, with the accompanying papers, for disposition by the Senate.

Sincerely yours,

EDWIN A. HALSEY,
Secretary of the Senate.

On the same day, May 7, 1936, the President of the Senate laid before the Senate the Secretary's aforesaid letter and the said Bill (S. 713) and the President's objections thereto in writing, which objections were read and, with the said Bill, referred to the Senate Committee on Claims (R. 3).

Under authority of said Act of Congress (S. 713), petitioner, on September 14, 1936, filed in the Court of Claims his petition to reinstate, reopen, rehear and readjudicate his said claim (R. 1); on October 15, 1936, respondent filed in said Court its opposition to said petition (R. 4), and on February 8, 1937, the Court of Claims entered its judgment dismissing the petition, without opinion (R. 6).

SPECIFICATIONS OF ERROR.

The Court of Claims erred:

1. In failing to hold that delivery to the Secretary of the Senate of the unsigned Bill and the President's objections thereto was not a return of said Bill and objections to the Senate, the House in which the Bill originated.

2. In failing to hold that the President not having returned the Bill with his objections thereto to the Senate in session within ten days (Sundays excepted) and the President not having been prevented from returning the Bill by an adjournment of "the Congress", said Bill became law without the President's approval and signature.

3. In failing to hold that it is the adjournment of "the Congress" and not of one of the Houses thereof which must prevent the return of a Bill by the President in order that said Bill, not signed and approved by him, shall not become a law.

4. In failing to hold that said Bill, S. 713, is a law of the United States.

5. In dismissing the petition.

ARGUMENT.

I.

Delivery of the Bill and Objections Thereto to the Secretary of the Senate is Not a Return Thereof to the Senate as Required by the Constitution.

The constitutional requirement is that the President must return the Bill and his objections thereto to the House in which the Bill "shall have originated". The Bill originated in the Senate and was, therefore, returnable to the Senate.

But the Bill was not returned to the Senate but was delivered, with the objections, to the Secretary of the Senate. This Court has explicitly held that the return required by Clause 2, Section 7, Article I, of the Constitution must be to the House in which the Bill originated "in session" *(The Pocket Veto Case,* 279 U. S. 655). Accordingly, it was the constitutional requirement that this Bill, S. 713, be returned to the Senate "in session".

An examination of the Journals of the Senate and House of Representatives from the First to the Seventy-Second Congress (President Washington to President Hoover, 1789-1933), both inclusive, discloses that, of the 638 Acts of Congress vetoed during that period, there is not a single instance of the return of a bill to either House being effected by the delivery thereof to the Secretary of the Senate or the Clerk of the House of Representatives. There is only one instance where an attempt was made to do so: On May 19, 1888, President Cleveland, finding the Senate in recess, attempted to return S. 1064 (50 Cong. 1 sess.) to the Senate by tendering the bill, and his objections thereto, to the Secretary of the Senate and then to the President of the Senate, but both of these officers refused to receive the same "claiming that the return of said bill and the delivery of said message could only properly be made to the Senate when in actual session" (President Cleveland's message, Senate Journal, p. 856, 50 Cong. 1 sess.).

These journals show that during the above mentioned period the uniform method of procedure was for the President's secretary *to appear before the Senate or House of Representatives in open session and announce the message from the President.*

An examination of the Journals of both houses of Congress during the Seventy-third and Seventy-fourth Congresses (1933-1936) discloses that the above practice prevailed with respect to the 103 acts of Congress vetoed during that period, except in the four following instances, involving four private relief bills, all originating in the Senate, in which the President attempted to return the bills to the Senate by a delivery thereof to the Secretary of the Senate, namely: *S. 1724,* 73 Cong., 2 sess. (Senate Journal 199), which was reintroduced in the 74 Cong., 2 sess., as S. 427 and passed and approved by the President (Senate Journal 309); *S. 694,* 74 Cong., 1 sess. (Senate Journal 490), which forms the basis of a pending suit in the Court of Claims; *S. 713,* 74 Cong., 2 sess. (Senate Journal 271), which forms the basis of this suit; and *S. 929,* 74 Cong., 2 sess. (Senate Journal 271).

II.

The Congress of the United States in Both Houses Thereof and Cannot Be One House Thereof.

That the Congress of the United States is composed of both the Senate and the House of Representatives and cannot consist of one of them is so obvious and settled as not to be open to debate.

In the very first sentence of the Constitution (Sec. 1, Article I), it is provided that the Congress of the United States "shall consist of a Senate and House of Representatives".

The sources of origin of the Federal provision respecting the veto power of the Executive are both interesting and instructive. When the Federal Constitution was drafted in

1787 twelve of the colonies were operating as independent states under constitutions adopted during or after the year in which Independence was declared: Delaware (1776), Georgia (1776), Maryland (1776), Massachusetts (1780), New Hampshire (1784), New Jersey (1776), New York (1777), North Carolina (1776), Pennsylvania (1776), South Carolina (1778), Vermont (1786), and Virginia (1776).

Only three of these constitutions gave the Executive any power whatever over legislation, those of Vermont, New York and Massachusetts.

By the Constitution of Vermont, bills originating in the Assembly (which was a single legislative body) were required to be submitted to the Governor *and* Council "for revision and concurrence or proposal of amendments". If the amendments proposed by the Governor and Council were not adopted by the Assembly the Governor and Council could suspend the passing of such bill until the next session of the Assembly.

The Constitution of New York of 1777 contained the following provision:

> "III. And whereas laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: Be it ordained, that the governor for the time being, the chancellor, and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature; and for that purpose shall assemble themselves from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration, under any pretence whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto in writing, to the

senate or house of assembly (in which soever the same shall have originated) who shall enter the objection sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, two-thirds of the said senate or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and, if approved by two-thirds of the members present, shall be a law.

"And in order to prevent any unnecessary delays, be it further ordained, that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days."

The Constitution of Massachusetts of 1780 contained the following provision:

"No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if after such reconsideration, two-thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and

the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the commonwealth.

"And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law."

By a comparison of the Federal provision with the New York and Massachusetts provisions it is not difficult to perceive that every idea contained in the former was derived from the latter, and that the form and language of the Federal provision closely parallels that of the New York Constitution of 1777. So close was this parallel that the preliminary draft of the Federal provision, as reported by the Committee on Detail of the Convention on August 6, 1787, did not contain the words "the Congress" but the words "the Legislature", used precisely in the same sense as those words were used in the New York Constitution. The sense in which the words "the Legislature" were used in the New York Constitution is demonstrated by the provision of the New York Constitution itself, wherein it was provided that the legislative power should be vested in "two separate and distinct bodies of men; the one to be called the assembly of the State of New York, the other to be called the senate of the State of New York; who together shall form the Legislature". In order to conform to the style employed to designate the Federal legislative body, in the final draft of the Federal provision, reported on September 12, 1787, by the Committee on Style, the words "the Congress" were substituted for the words "the Legislature". (*Thorpe,* "The Federal and State Constitutions", 1909, pp. 562, 785, 1686, 1888, 1893, 2453, 2594, 2623, 2628, 2787, 3081, 3248, 3762, 3812; *Charles Warren,* "The Making of the Constitution", pp. 384, 686; and see *U. S.* v. *Weil,* 29 Ct. Cl. 523, 538).

In the expression "the Congress by their adjournment prevent" the modifying possessive adjective and the verb

are both in the plural, indicating careful diction and a clear intent that "the Congress" should be understood in the plural sense as denoting the concurrent adjournment of the two Houses of the National Legislature, just as the words "the Legislature . . . , by their adjournment", as used in the New York Constitution of 1777, meant the adjournment of the whole law making power of the State.

This is further emphasized by the fact that while the "return" of the bill was to be to the particular House in which it originated the "adjournment" referred to in the same provision is not the adjournment of a particular House but the adjournment of "the Congress"—the whole Legislative power of the United States.

III.

Only When THE CONGRESS, by Their Adjournment, Prevent a Return Does a Bill Which the President Has Not Approved and Signed Fail to Become a Law.

It may well be questioned whether the recess of the Senate prevented the return of the Bill in this case. The Bill was presented to the President on Friday, April 24, 1936; the Senate recessed at 3:25 p. m. on Monday, May 4. This bill, therefore, had been in the President's hands 8 full week days of 24 hours each, and 2 Sundays, when the Senate recessed on Monday, May 4, assuming that the Bill was presented to him at about the same time of day on April 24th that the Senate recessed on May 4th. This was a longer time than the average time that all Presidents have held such bills, as shown by the following statement derived from an examination of the time of presentation of all vetoed bills and the dates of the veto messages, as disclosed by the Journals of the Senate and House of Representatives:

President	*Bills Presented*	*Bills Vetoed**	*Average days held*
Washington	409	2	7
Madison	906	5	4.9
Monroe	1,039	1	0
Jackson	1,692	5	2.8
Tyler	813	6	5.1
Polk	752	2	4
Pierce	977	9	5.9
Buchanan	689	4	5.5
Lincoln	1,042	2	5.5
Johnson	1,493	21	7.7
Grant	3,307	43	6
Hayes	1,408	12	2.3
Arthur	1,741	4	7.5
Cleveland I	3,695	304	8.99
B. Harrison	3,053	19	7
Cleveland II	1,821	42	8.4
McKinley	3,455	6	8
T. Roosevelt	14,427	42	6.1
Taft	1,564	30	4.2
Wilson	2,524	33	7
Harding	937	5	7
Coolidge	4,186	20	6.3
Hoover	2,399	21	7.5
F. D. Roosevelt	2,918	103	7.5
Total		741	Aver. 7.642

*Presidents John Adams, Jefferson, J. Q. Adams and Taylor and Fillmore vetoed no bills. Congress was not in session at any time during the incumbency of President W. H. Harrison or President Garfield.

Assuming, however, that the President was prevented by the adjournment of the Senate from returning the Bill and his objections to the Senate "in session", the Bill became a law without the President's approval and signature, because there was no adjournment of the "the Congress" which prevented the return, and there is no provision in the Constitution that a Bill, disapproved by the President,

shall not become a law when he is prevented from making a return to the body in which it originated by reason of a recess or adjournment of that body.

The language of Clause 2, Sec. 7, Article I, is unambiguous. The President must be prevented from returning the Bill by an adjournment of "the Congress." The framers of the Constitution defined the term "the Congress" and provided that it should "consist of a Senate and House of Representatives." Furthermore, the framers anticipated not only adjournments of "the Congress" but also adjournments of either House thereof and, therefore, carefully provided (Clause 4, Sec. 5, Article I) that "neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days."

The framers of the Constitution, many of whom (39 out of the 55) were, or had been, members of the Continental Congress, knew that legislative bodies frequently take a temporary recess for a day or two. The Constitution was framed in 1787, and in that year (on September 28) submitted by the Congress to the Legislatures of the several States. During the previous year—1786—, for example, the Continental Congress was in session from January 2 to November 13, a period of 271 days, excluding Sundays, and, during that period, they were in recess, of their own motion, 2 Mondays, 2 Tuesdays, 2 Wednesdays, 1 Thursday, 7 Fridays, and 41 Saturdays; 39 of said recesses being for 1 day, 6 for 2 days, and 1 for 4 days. And in 1787, the Continental Congress, from the time of assembly on January 17, to August 6 (when it could no longer get a quorum to do business until a few days before September 28, the day on which the Constitution was submitted to the Legislatures of the States), a period of 173 days, excluding Sundays, was in recess, of its own motion, 1 Monday, 1 Tuesday, 2 Wednesdays, 4 Fridays, and 16 Saturdays; 12 of these recesses being for 1 day, and 6 for 2 days each. Based upon this experience they provided in the Constitution that each House, on its own motion, might adjourn for one, two, or

even three days at a time, but did not provide that where such recess prevented the return of a bill it should die.

Knowing, then, that either one of the Houses of Congress could adjourn for one, two or three days at a time, during a session of Congress, the framers, nevertheless, provided that only when "the Congress by *their* adjournment" prevented the return of a Bill should it fail to become a law; and nowhere did they provide that when one House of the Congress, by *its* adjournment, prevented the return of a Bill, should it fail to become a law.

IV.

The Veto Power Being in Derogation of Legislative Power Can Be Exercised Only When and as Expressly Authorized.

While the legislative power of Congress is limited to that expressly, or by necessary implication, conferred by the Constitution, nevertheless, within that sphere, by the express language of the Constitution, the Congress possesses "all legislative power" (Sec. 1, Art. I); therefore, any grant of legislative power to the Executive is in derogation of the legislative power of Congress, and must be found to exist in the express language of the Constitution.

The power of the President, with respect to legislation, is advisory only. He is not invested with the discretionary power to kill a single bill; but he is clothed with power to deprive the Congress of the right to exercise legislative power in respect to any bill unless a larger number are in favor thereof than is necessary in the ordinary exercise of legislative power. *While, therefore, not possessing the power to legislate, the President, nevertheless, possesses the power to restrict the exercise by Congress of the power to legislate.*

This *qualified veto* he is authorized to exercise with respect to *every bill* presented to him. But only in a *single instance* does the Constitution provide that his power shall

extend to imposing an *absolute veto* upon any act of Congress, and that is the one case expressly stated in the Constitution, namely: Where "the Congress by their adjournment prevent" the return of the bill.

The Constitution provides (Clause 2, section 7, Article I) that every Act of Congress shall, before it becomes a law, be presented to the President. In view of the constitutional provision (Section 1, Article I) that all legislative powers granted by the Constitution are vested in the Congress, it must be inferred that any bill which has passed Congress and been presented to the President is a law, *unless it affirmatively appears* that something subsequent to such presentation, within the express provisions of the Constitution, has intervened to prevent its becoming a law; and the only thing, under the express language, that can so happen, is the open and notorious adjournment of the Congress.

The veto power, being in derogation of the legislative power, the extent and manner of its exercise must be controlled by the express language of the Constitution. (*Lukens* v. *Nye*, 105 P. 593, 156 Cal. 498; *Stong* v. *People*, 220 P. 999, 74 Colo. 283; *Elmen* v. *St. Bd. of Equalization and Assessment*, (Neb.) 231 N. W., 772; *Fulmore* v. *Lane*, 140 S. W., 405, 411, 1082, 104 Tex. 499; *Hartness* v. *Black*, 114 A. 44, 95 Vt. 190; *May* v. *Topping*, 64 S. E. 848, 65 W. Va. 656; *Wood* v. *State Administrative Board*, 238 N. W., 16, 255 Mich., 220).

In *Wood* v. *State Administrative Board, supra*, the court discussed the veto power generally, saying:

> "The veto power is a legislative function, although it is not affirmative and creative, but is strictly negative and destructive. It cannot be exercised by the executive except through constitutional grant. By Constitution, article 4, sec. 1, in harmony with American political theory, the state government is divided into the three historical departments, the legislative, executive and judicial, and by section 2 it is declared that: 'No person belonging to one department shall exercise the powers properly belonging to another, ex-

cept in the cases expressly provided in this constitution'. This historical and constitutional division of the powers of government forbids the extension, otherwise than by explicit language or necessary implication, of the powers of one department to another. The language of section 37 must be read with all intendments against enlargement beyond its plain words. And if it were ambiguous, the doubt should be resolved in favor of the traditional separation of governmental powers and the restricted nature of the veto."

In *Fulmore* v. *Lane, supra,* the Court said of the veto power:

> "The veto power of the executive under our system of government is not inherent in such officer as a legislative function, but is a power confided in him by the supreme authority of the state; and in exercising this function, while he is not confined to rules of strict construction, he nevertheless must look to the Constitution for the authority to exercise such power."

In *May* v. *Topping, supra,* the court had for consideration a case where an appropriation bill, embracing distinct items, was presented to the Governor on February 26, 1909, and the Legislature adjourned immediately thereafter on the same day; the Constitution providing that if the Governor disapproved any item he should communicate his disapproval, with his reasons therefor, to the House in which the bill originated, and that all items approved should have the force of law but all items so disapproved should be void unless repassed by a majority vote of each House. After the adjournment, the Governor marked out with red ink (among other items) an item in favor of Mrs. May, the plaintiff, and endorsed on the bill his approval of all other items. The Court held that the items marked out in red ink were not disapproved, because, under the constitutional provision, no item could be disapproved unless the disapproval was returned to the Legislature before it adjourned no matter how soon the Legislature adjourned after pre-

senting the bill to the Governor. In answer to the argument that the Legislature could thus deprive the Governor of his veto power over such bills the court said, among other things, that the court could not amend the Constitution by construction; that "where that instrument is clear in its terms and of plain interpretation to any ordinary and reasonable mind, there is no room for construction, and it would be mischievous and unlawful to assume it"; that "it was surely believed that the legislative and executive branches, in the interests of the masses they represent, would treat each other fairly in such cases"; and that if the Governor wanted to insist upon the exercise of his veto power; "He had full power to convene the body the next day in extraordinary session, limiting that session to the consideration of appropriations only".

The only possible way in which it can be held that S. 713 failed to become a law is to write into the Constitution something which is not there and to do so notwithstanding that the framers knew and provided for three day adjournments of either House and yet did not provide that a Bill should not become a law when the President was prevented from returning it by the adjournment of the House in which it originated. To hold that S. 713 did not become a law means changing the words "unless the Congress by their adjournment prevent its return" (Clause 2, Sec. 7, Article I) to read "unless the Congress or the House in which it shall have originated by their adjournment prevent its return." This, we respectfully submit, cannot possibly be done without absolutely destroying every fundamental concept of constitutional interpretation.

In *Lake County* v. *Rollins*, 130 U. S. 662, involving construction of a provision of the Constitution of Colorado, counsel offered interpolations of the Provision. This Court said (p. 670):

> "We are unable to adopt the constructive interpolations ingeniously offered by counsel for defendant in error. Why not assume that the framers of the Con-

stitution, and the people who voted it into existence, meant exactly what it says? At the first glance, its reading produces no impression of doubt as to the meaning. It seems all sufficiently plain; and in such case there is a well settled rule which we must observe. The object of construction, applied to a Constitution, is to give effect to the intent of its framers, and of the people in adopting it. This intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument."

In the case of *United States* v. *Sprague,* 282 U. S. 716, this Court stated (p. 731):

> "The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition."

V.

The Established Practice Has Been that a Bill Not Approved and Signed by the President Becomes a Law Notwithstanding that a Recess or Adjournment of the House in Which it Originated Prevented Its Return.

In *The Pocket Veto Case,* 279 U. S. 655, this Court held (p. 689) that:

> "Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions of this character."

and the Court discussed the construction placed upon the constitutional provision in reference to so-called "pocket vetoes".

Senate Bill 713 was not returned by the President to the Senate in the time and manner prescribed by the Constitution. *In contemplation of the Constitution that Bill has*

never been returned to the Senate. At the expiration of the constitutional 10 days the status of S. 713 became fixed by the Constitution and no subsequent action by either the President or Congress could change that status. The Bill either became a law by reason of the President's failure to constitutionally return it or it died in his hands as a so-called "pocket veto", on the theory that the recess or adjournment of the Senate alone prevented its return. Not only does the language of the Constitution forbid the latter conclusion, but legislative and executive interpretation throughout our entire history is opposed to it.

From the First Congress in 1789 to the end of the 74th Congress in 1936 there were a total of 601 so-called "pocket vetoes", 117 of which occurred during the first term of President F. D. Roosevelt (House Document No. 493, 70th Cong., 2nd Sess. discussed in *"Pocket Veto"* case *supra;* "Record of Veto Messages", 51st to 74th Cong., Government Printing Office, 1936; House and Senate Journals 1st to 74th Congresses).

As shown by the Journals of the Senate and House of Representatives, of these 601 so-called "pocket vetoes", 5 followed adjournments of Congress for the Christmas Holidays; 3 followed adjournments within the session during the administration of President Johnson; 247 followed *sine die* session adjournments; and 354 followed *sine die* adjournments of Congress.

In all instances, except where a Congress adjourned by reason of the expiration of its term, adjournments were pursuant to *resolutions concurred in by both Houses;* and in *no single instance* was there a "pocket veto" due to the recess or adjournment of one House alone within 10 days, Sundays excepted, of the presentation of the bill.

On the contrary, we cite the following instances where bills have been treated as laws without the President's approval when the House in which the bills originated was in recess or adjournment on the 10th day after presentation. The Presidents and Congress regarded the status of these bills as fixed by the Constitution into laws, and they were

published and enforced as laws, just as S. 713 became fixed into a law by the Constitution upon the failure of the President to make a constitutional return thereof with his objections.

(a) In the first session of the 54th Congress, three Senate bills, to wit: Nos. 1, 138 and 142, were presented to President Cleveland on January 28, 1896 (Senate Journal, 100). *On the 10th day thereafter,* namely, February 8, 1896, *the Senate was in recess* (Senate Journal 120). On February 10, 1896, President Cleveland's secretary, Mr. Pruden, addressed the presiding officer of the Senate and said, among other things, that these three bills "having been presented to the President of the United States January 28, 1896, and not having been returned by him to the House of Congress in which they originated within the ten days prescribed by the Constitution *have become laws without his approval*" (Senate Journal, 121).

(b) In the second session of the 54th Congress, Senate Bill 724 was presented to President Cleveland on January 5, 1897 (Senate Journal, 41). *On the 10th day thereafter,* namely, January 16, 1897, *the Senate was in recess* (Senate Journal, 54). On January 18, 1897, President Cleveland's secretary, Mr. Pruden, addressed the presiding officer of the Senate and said, among other things, that this bill "having been presented to the President on the 5th instant, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution *has become a law without his approval*" (Senate Journal, 57).

(c) In the third session of the 66th Congress, Senate Joint Resolution 191 was presented to President Wilson on December 17, 1920 (Senate Journal, 26). *On the 10th day thereafter,* namely on December 29, 1920, *the Senate was in recess* (Senate Journal, 34). On January 7, 1921, President Wilson delivered a message to the Senate, by Mr. Sharkey, his secretary, saying, among other things, that this Joint Resolution "having been presented to me on December 17,

1920, and not having been approved by me or returned to the Senate within the 10 days prescribed by the Constitution, *has become a law without my approval''* (Senate Journal, 46).

(d) At the second session of the 53rd Congress House Bill 2582 was presented to President Cleveland on August 6, 1894. *On the 10th day* thereafter, August 17, 1894, *the House was in recess* (House Journal, 574). On August 20, 1894 (House Journal, 575), a message from President Cleveland announced that this bill ''having been presented to the President on the 6th instant, *had become a law without his approval''*.

(e) At the same session of Congress House Bill 6518 was presented to President Cleveland on August 7, 1894. *On the 10th day thereafter,* August 18, 1894, *the House was in recess* (House Journal, 574). On August 20, 1894, a message from President Cleveland announced that this bill ''having been presented to the President on the 7th instant (August 7, 1894) *had become a law without his approval''*.

(f) At the first session of the 54th Congress House Bills 3607 and 4526 were presented to President Cleveland on May 19, 1896. *On the 10th day thereafter,* May 30, 1896, *the House was in recess* (House Journal, 556). On June 3, 1896, a message from President Cleveland announced that these Bills ''were presented to the President May 19, 1896, and not having been returned by him to the House of Congress in which they originated within the ten days prescribed by the Constitution *have become laws without his approval''* (House Journal, 569).

(g) At the second session of the 54th Congress House Bill 7777 was presented to President Cleveland on January 12, 1897. *On the 10th day thereafter,* January 23, 1897, *the House was in recess* (House Journal, 104). On January 28, 1897 (House Journal, 122), a message from President Cleveland announced that this Bill ''having been presented to the President on January 12, 1897, and not having been returned by him to the House of Congress in which it origin-

ated within the time prescribed by the Constitution *has become a law without his approval''*.

The legislative history of the 10 bills above cited is legally and constitutionally indentical with the legislative history of Senate-Bill 713, and it is apparent that if those bills became laws Senate Bill 713 also became a law. But we do not say that the 10 bills cited above became laws because the Presidents thought they became laws or Congress treated them as laws any more than it can be said that Senate Bill 713 did not become a law because the President thought he had prevented it from becoming a law. Upon the failure of the Presidents to return all these bills in the constitutional period their status became fixed by the Constitution (*i. e.*, they were laws or not laws) and nothing the Presidents or Congress could do could change that status.

We cite the instances of the ten bills to show merely that Presidents Cleveland and Wilson and the Congresses to which the bills were returned believed that when a bill was not returned in the time prescribed by the Constitution it became a law although the House in which it originated was not in session on the 10th day, the Congress not having adjourned. And these executive and legislative precedents, coupled with the fact that not a single instance is found throughout our history of a so-called "pocket veto" due to the adjournment of one House of Congress alone, is such clear proof of long executive and legislative interpretation as to be strongly persuasive of the meaning of the constitutional provision.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Claims should be reversed.

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IN THE

Supreme Court of the United States

October Term, 1937.

No. 37.

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v.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES.

REPLY TO BRIEF OF UNITED STATES.

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Respondent contends that the word "their", as used in the expression "unless the Congress by their adjournment prevent", may refer to the Senate *or* the House of Representatives, in the alternative, and that, therefore, the adjournment of the Senate alone having prevented the return of the bill, in a constitutional sense, it did not become a law.

An examination of the Constitution demonstrates that respondent's contention cannot be sustained, because (1) the context is always clear where the Constitution speaks of the two Houses separately; (2) wherever the word "Congress" is used in the Constitution the context makes it clear that reference is to both Houses and not to either one of them separately; (3) the use of the singular or plural in referring to the Senate or House of Representatives is exclusively one of style and never one of substance; and (4)

where the plural is used in referring to Congress, the two Houses of Congress are meant and not the members of either House.

(1) The Context is Always Clear When the Constitution Speaks of the Two Houses Separately.

In most instances the Senate and the House of Representatives are spoken of in the Constitution by particular designation as such. Wherever they are mentioned as constituting the National Legislature they are referred to as the Congress, as we shall presently see. In only a few instances are the two Houses spoken of separately by the use of the same language, and in each instance the context is clear, as follows: "*Each* House shall be the Judge of the Elections, Returns, etc. * * *; a Majority of *each* House shall constitute a Quorum, etc. * * * but a smaller Number may, etc. * * * as *each* House may provide"; "*Each* House may determine the Rules etc."; *Each* House shall keep a Journal, etc. * * *; and the Yeas and Nays of the Members of *either* House on any question * * *; "*Neither* House, during etc. * * * shall, without the Consent of the *other*, adjourn etc. * * *"; "They shall * * * be privileged from Arrest during their Attendance at the Session of *their respective Houses*, * * *; and for any Speech or Debate in *either* House, they shall not, etc."; "he shall return it * * * to *that* House in which it shall have originated, *who* shall enter, etc. * * * on *their* Journal. * * * If after, etc. * * * two thirds of *that* House etc. * * * it shall be sent * * * to the *other* House * * * and if approved by two-thirds of *that* House. * * * But in all cases * * * the Names * * * shall be entered on the Journal of *each House respectively*"; "He (the President) may * * *, convene *both* Houses, or *either* of *them*, and in case of disagreement between *them*, * * * he may adjourn *them*, etc.".

The context leaves no room for doubt in any of these instances.

(2) The Word "Congress" as Used in the Constitution Means Both Houses of Congress and Never Either House in the Alternative.

The presence of the word "Congress" in the expression "unless the Congress by their adjournment prevent" is an insuperable barrier to the contention of the respondent that the word "their" may refer to either House in the alternative, if the uniform sense in which the word "Congress" is used in the Constitution is a proper criterion.

Aside from the appearance of the word "Congress" in the clause "unless the Congress by their adjournment prevent", the word "Congress" appears 28 times in the Constitution, as follows: twice in the expression "The Congress shall have power"; twice in "Consent of the Congress"; and once in each of the following expressions: "a Congress of the United States", "the Congress of the United States", "the Session of Congress", "prescribed by Congress", "the Acceptance of Congress", "Consent of Congress", "the Congress may at any time by Law make", "the Congress shall assemble", "prohibited by Congress", "Controul of the Congress", "Senators and Representatives to which the State may be entitled in the Congress", "The Congress may determine", "The Congress may by law provide", "The Congress may by Law vest", "He (the President) shall * * * give to the Congress Information", "the Congress may from time to time ordain", "such Regulations as the Congress shall make", "as the Congress may by Law have directed", "the Congress may by general Laws prescribe"; "admitted by the Congress into the Union", "the Consent * * * of the Congress", "The Congress * * * shall propose Amendments", and "the

* * * mode of Ratification may be proposed by the Congress".

A mere reference to the foregoing expressions is sufficient to make it apparent that the Constitution of 1787 uses the word "Congress", in all of the 28 instances, *as meaning the Senate and House of Representatives which constitute the National Legislature, and never as meaning the one or the other in the alternative.*

Moreover, the word "Congress" is used 16 times in the Amendments to the Constitution, once in each of the following expressions: "Congress shall make no law respecting * * * religion" (1789), "Congress shall have power to enforce this article" (Amendment XIII) (1865), twice in the expression "Representatives in Congress" (1868), once each in the expressions "an oath, as a Member of Congress" (1868), "But Congress may by a vote of two-thirds of each House" (1868), "The Congress shall have power to enforce * * * this article" (XIV Amendment). (1868), "The Congress shall have power to enforce this article * * *" (XV Amendment) (1870), "The Congress shall have power to lay and collect taxes" (1913), "The Congress and the several States shall have concurrent power" (1919), "Submission to the States by the Congress" (1919), "The Congress shall have power to enforce this article" (Amendment XIX) (1919), "The Congress shall assemble at least once in every year" (1933); twice in the expression "The Congress may by law provide" (1932); and once in the expression "the submission thereof (the XXI Amendment) to the States by the Congress" (1933).

It is obvious, from the foregoing instances, that the word "Congress" has the same meaning in the Amendments that it has in the Constitution, and that it has the same meaning in the 20th as in the 18th and 19th centuries. If the word "Congress" in all the other 44 instances so patently refers exclusively to the two branches of the National Legislature,

it is extremely difficult to see any reason for contending that in the only other instance where the word "Congress" is used in the Constitution, namely, in the expression "unless the Congress by their adjournment prevent", it should have a wholly different meaning, especially where the context so clearly indicates a meaning exactly the same as in the other 44 instances.

(3) The Use of the Singular or the Plural in Referring to a Particular House is Exclusively a Matter of Style.

Frequently the Constitution refers to a House of Congress in the singular, for example: "Each House shall be the Judge of the Elections, etc. of *its* own Members", "Each House may determine the Rules of *its* Proceedings, punish *its* Members", "Each House shall keep a Journal of *its* Proceedings, etc." And the Constitution just as frequently refers to such House in the plural, for example; "The House of Representatives shall Chuse *their* speaker", "The Vice President * * * shall have no Vote unless *they* be equally divided", "The Senate shall Chuse *their* other Officers", "Each House shall keep a Journal * * * and * * * publish the same, excepting such Parts as may in *their* Judgment, etc.", and in the 20th Amendment, submitted in 1932, the word "them" is applied to the House of Representatives and the Senate separately.

There is no doubt that in all these instances the singular or the plural could be used interchangeably without in any way affecting the sense, and it is apparent that the use of the one or the other is exclusively a matter of style or good usage.

(4) Where the Plural is Used in Referring to Congress the Two Houses of Congress are Meant and Not the Members of Either House.

In all the instances in the Constitution where the plural is used in referring to Congress it is believed that the con-

text will demonstrate that reference could not be to the members of either House, or even to the members of both Houses, but to the two Houses themselves as constituting the Congress.

Speaking of the census, the Constitution says: "The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as *they* shall by Law direct". Here the word "they" could not refer separately to the members of the Senate or the House of Representatives because neither House alone possesses the power to "by Law direct". Could the word "they", in any reasonable sense, be said to refer to the membership of both Houses? We know that the combined membership of the two Houses lacks the power to "by Law direct". Moreover, the Constitution is against such an interpretation. The Constitution speaks of Senators and members of the Senate, and Representatives and members of the House of Representatives, but the Constitution nowhere speaks of members of Congress. The Constitution conceives of the Congress as composed of two separate and independent legislative assemblies, each having its own members, but does not conceive of the combination of the two Houses, which is called Congress, as having members. (See, for example, Art. I, Sec. 5.) Therefore, the only rational conclusion would seem to be that the word "they" refers to the two Houses that compose the Congress, "they" constituting the only body that has the power to "by Law direct".

Again we find the expression "The Congress shall assemble at least once in every year . . . unless *they* shall by law appoint a different day." What does the word "they" refer to? It could not refer to the members of either House separately, because neither House separately possesses the power to "by Law appoint a different day".

It must, therefore, refer either to the members of both Houses or to both Houses, and, for reasons above stated, it would seem clear that the reference is to the two separate legislative assemblies.

Again the Constitution, after providing for the appointment of public officers, says: "but the Congress may by Law vest the appointment of such inferior Officers, as *they* think proper, in the President alone, in the Courts etc."

Here it is equally apparent the word "they" cannot refer to the membership of either House but that it obviously refers to the two Houses that compose the Congress, which alone possesses power to "by Law vest" the appointment etc.

The Constitution provides that the President may "on extraordinary Occasions, convene both Houses, or either of *them*, and in case of Disagreement between *them*, * * *, he may adjourn *them*, etc."

Here, of course, no comment is necessary. The word "them" obviously refers to the two Houses.

The Constitution also speaks of the United States in the plural but the context never leaves any doubt whether reference is to the United States as a whole or to the separate States.

It says: "No title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under *them*, shall, without the Consent of the Congress, accept of any present etc." Here, of course, the word "them" refers to the United States as a whole and not to the States that compose it, much less to the citizens that compose the States.

Again the Constitution says that the President shall receive a compensation during his term of office and that "he shall not receive within that Period any other Emolument from the United States, or any of *them*". Here it is perfectly plain what the meaning is.

Again it says "Treason against the United States, shall consist only in levying War against *them*, or in adhering to *their* enemies, etc.". Here it is apparent the reference is to the whole United States.

The respondent criticizes the "diction" of the Constitution for using the plural in referring to a collective body, and for that reason, in some way, contends that the plural as used in the 18th century may refer to the two Houses in the alternative. There is no merit in this suggestion. The respondent overlooked the XXth Amendment, *adopted in 1933*, where it is provided that "The Congress shall assemble at least once in every year * * * unless *they* shall by law appoint a different day". It is, of course, clear that the reference here could not be to either House in the alternative, but is to the two Houses that compose Congress.

If the Constitution is so perfectly clear in respect to all its other plural references, where does the difficulty arise with respect to the expression "unless the Congress by their adjournment prevent"? Language could hardly be clearer or more explicit than that. The word "their" must refer to the two houses of Congress and not to either one of them in the alternative, not only because the text is clear and the Constitution is clear with reference to all other plural references, but also because neither House alone possesses the power to adjourn the Congress. (Const. Art. II, sec. 5; Jefferson, Senate Manual, 1936, p. 311.)

No instrument was ever written whose language is less open to misunderstanding than the Constitution that was submitted to the States in 1787. Nothing was left to inference that could be explicitly stated. We must take it as we find it and not undertake to change it by construction, because, where the language is unambiguous, to construe is to change, and that the Courts have no right to do. If ordinary meaning is to be ascribed to language, the expression "unless the Congress by their adjournment prevent" can

mean only one thing, namely, "unless the Congress by the concurrence of both Houses that compose it adjourn the Congress and such adjournment of Congress prevents the return of the bill". In no other case does the Constitution give the President the power of *absolute veto.* Can this Court now say that he shall have the power of *absolute veto* also in case one of the Houses of Congress alone adjourns before the bill has been returned even though such adjournment actually prevents the return of the bill? It is sufficient that effect be given to the unambiguous language of the Constitution; the results, whether they may seem to us good or bad, must be presumed to have been intended by the people who adopted the Constitution.

The contention of Petitioner is in harmony with the long continued practice of the Legislative and Executive Departments. As has already been shown (Petitioner's brief, p. 18), from 1789 to 1936—during a period of 147 years—there were 601 so-called *pocket vetoes,* but in every one of these cases the *pocket veto* followed an *adjournment of Congress,* and not a single one followed or resulted from the adjournment of *one House alone,* and yet we do not find any complaint that the Presidents were being deprived of their constitutional rights.

On the other hand, it is not difficult to see what evil results would follow from adopting the views advocated by the respondent, that a bill of which the President does not approve becomes a *pocket veto,* an *absolute veto,* merely because the House in which it originated was in recess on the 10th day after it was presented to him.

It would deprive each House of its constitutional right (Art. I, sec. 5, cl. 4) to be in recess on the tenth day after presentation of a bill of such House.

It would enable one House to kill a bill passed by both Houses.

It would make the adjournment of one House equivalent to the adjournment of Congress, although the Constitution expressly provides that such adjournment may occur only "during the Session of Congress".

Finally, it would result in great confusion and uncertainty as to whether any bill of Congress had, or had not, become a law of the United States.

If the bill had not been returned by the President in the time prescribed by the Constitution, the Congress would not know whether the bill had been signed by him and had become a law, or whether he desired to kill it due to the recess of the House of origin. Whether, in such case, the bill had died or was yet alive, by operation of the constitutional provision, would depend on proof of many extraneous facts, and with no power in any court to coerce either the legislative or excutive branches, and the Congress standing idly by ready, but unable, to act in a matter with respect to which it was vested by the Constitution with "all legislative powers".

We can perceive no reason why the President could not, if he thought he was being deprived of his constitutional rights, convene the House of origin in extra session for the purpose of returning a bill with his objections. The Constitution (Art. II, sec. 3) gives him authority to do so.

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 939

DAVID A. WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims overruling the petition below (R. 6) was entered without an opinion.

JURISDICTION

The order of the Court of Claims was entered February 8, 1937 (R. 6). The petition for a writ of certiorari was filed April 30, 1937 (R. 6). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether a bill becomes a law without the signature of the President where, on the tenth day after the presentation of such bill to the President, he is prevented from returning it, together with his objections, to the House of Congress in which the bill originated, because that House has adjourned.

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable portions of the Constitution are set forth in the Appendix, *infra*, pp. 7–8.

STATEMENT

The facts as disclosed by the record (R. 1–4) may be summarized as follows:

On Friday, April 24, 1936, Senate Bill 713, which originated in the Senate (R. 3), and which authorized the Court of Claims to reopen and rehear a claim of the petitioner which had theretofore been decided against him (R. 3, 4), was presented to the President of the United States (R. 1). On Monday, May 4, 1936, the Senate took a recess until noon Thursday, May 7, 1936, the House of Representatives remaining in session (R. 1).

While the Senate was in recess, the President returned the bill, S. 713, together with a message dated May 5, 1936, addressed to the Senate, setting forth his objections to the bill. The bill and the message were delivered to the Secretary of the Senate (R. 2). When the Senate reconvened on May 7, 1936, the Secretary thereof, by letter, advised it

of the return of the bill and of the delivery of the message of the President (R. 2). Thereupon the bill, together with the President's message, was referred to the Committee on Claims of the Senate (R. 3). No further action was taken thereafter (R. 3).

On September 14, 1936, the petitioner filed a petition in the Court of Claims to reinstate, reopen, rehear, and adjudicate his claim which had theretofore been dismissed. *Wright* v. *United States,* 60 C. Cls. 519. The United States opposed this petition on the ground that Senate Bill 713 had never become a law (R. 5, 6). The court below overruled the petition on February 8, 1937 (R. 6).

ARGUMENT

Article I, Section 7, Clause 2 of the Constitution (*infra,* p. 7) provides in part:

> If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

It is agreed that the Senate, the House of Congress in which the bill originated, had taken a recess or had adjourned on the tenth day (Sundays excepted) after the bill had been presented to the President, and that, by its action, it had prevented

the President from returning the bill to it, together with his objections thereto, on that day.

The word "adjournment", as used in the Constitution, is not limited to final adjournment. Each House adjourns from day to day, but neither House may without the consent of the other "adjourn" for more than three days. Article 1, Section 5, Constitution. The Houses of Congress receive messages from the President only while they are in session. See Senate Standing Rule XXVIII, Clause 1, House Rule XL; Hind's Prec. of H. of R. ch. CXXXVIII, Sec. 6591, p. 812; 1 Curtis, Constitutional History of the United States, p. 486.

The petitioner urges that the bill became a law on the theory, apparently, that the President acts at his own risk in taking the full ten days given him by the Constitution in considering a bill of Congress. The petitioner also contends that this Court in *The Pocket Veto Case,* 279 U. S. 655, held that the House of Congress in which a bill originated must be in session at the time the veto is returned thereto, and that the action of the President in the instant case of delivering the bill, together with the objections thereto, to the Secretary of the Senate, did not constitute a return in the manner provided by the Constitution. We do not believe, however, that the determination of the instant case depends upon that part of the opinion, for this Court also held in that case that the power conferred upon the President can not be narrowed

or cut down by Congress, or the time within which it is to be exercised lessened directly or indirectly. It was stated (pp. 680–681):

> 4. We think that under the constitutional provision the determinative question in reference to an "adjournment" is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that "prevents" the President from returning the bill to the House in which it originated within the time allowed. It is clear, and, as we understand, is not questioned, that since the President may return a bill at any time within the alloted period, he is prevented from returning it, within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period.

Edwards v. *United States,* 286 U. S. 482, 486, and *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, 454–455, hold to the same effect. We submit, therefore, that, the return of Senate Bill 713 having been prevented by the action of the Senate, it automatically failed to become a law in the absence of the President's signature.

Executive interpretations to the contrary, set forth in the petitioner's brief, are not persuasive. They occurred during the administration of President Cleveland and President Wilson. The deci-

sion of this Court in *The Pocket Veto Case, supra,* clearly demonstrated the incorrectness of these interpretations, if such they were.

Finally, we submit that were the interpretation contended for by the petitioner accepted, it might seriously prejudice the President's veto power. It is apparent that by means of the day to day, or three-day recesses, or "adjournments" contemplated by Clauses 1 and 4, Section 5, Article 1 of the Constitution, a branch of the Congress could effectively nullify the President's veto power in many instances.

CONCLUSION

We respectfully submit that the decision of the court below is correct. There exists no conflict. The petition for a writ of certiorari should, therefore, be denied.

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Solicitor General.
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Attorneys.

MAY 1937.

APPENDIX

Section 5, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part I, p. 31), provides:

> SEC. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.
>
> Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.
>
> Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.
>
> Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Clause 2, Section 7, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part 1, p. 32), provides:

> Every Bill which shall have passed the House of Representatives and the Senate,

shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 37

DAVID A. WRIGHT, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

BRIEF FOR THE UNITED STATES

OPINION BELOW

The order of the Court of Claims overruling the petition below (R. 6) was entered without an opinion.

JURISDICTION

The order of the Court of Claims was entered February 8, 1937 (R. 6). The petition for a writ of certiorari was filed April 30, 1937 (R. 6), and was granted June 1, 1937 (R. 6). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether a bill becomes a law without the signature of the President where, on the tenth day after the presentation of such bill to the President, he is prevented from returning it together with his objections to the House of Congress in which the bill originated, because that House has adjourned.

Whether a bill becomes a law without the signature of the President where the President, on the tenth day after the bill was presented to him, returns the bill together with his objections to the Secretary of the Senate (the House in which the bill originated), the Senate being then in recess pursuant to an adjournment for three days.

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable portions of the Constitution are set forth in notes 1 and 2, pages 7, 9, and 10, *infra*.

STATEMENT

The facts as disclosed by the record (R. 1–4) may be summarized as follows:

Senate Bill No. 713 authorized the Court of Claims to reopen and rehear a claim of the petitioner which had theretofore been decided against him (R. 3, 4). The bill was presented to the President of the United States on Friday, April 24, 1936 (R. 1). It had originated in the Senate (R. 3). On Monday, May 4, 1936, that body took a recess until noon Thursday, May 7, 1936, but the

House of Representatives remained in session (R. 1). On May 5, 1936, and while the Senate was in recess, the President returned the bill, together with a message addressed to the Senate setting forth his objections to the bill. The bill and the message were delivered to the Secretary of the Senate (R. 2). When the Senate reconvened on May 7, 1936, the Secretary thereof, by letter, advised it of the return of the bill and the delivery of the message of the President (R. 2). Thereupon the bill, together with the President's message, was referred to the Committee on Claims of the Senate (R. 3). No further action was taken thereafter (R. 3).

On September 14, 1936, the petitioner, acting under the asserted authority of S. 713, filed a petition in the Court of Claims to reinstate, reopen, rehear, and readjudicate his claim, which had theretofore been dismissed. *Wright* v. *United States,* 60 C. Cls. 519. The United States opposed this petition on the ground that Senate Bill 713 had never become a law (R. 5, 6). The court below overruled the petition on February 8, 1937 (R. 6).

SUMMARY OF ARGUMENT

The Constitution and the decisions of this Court make clear that at least in every other situation than the one here presented the President has ten days (Sundays excepted) within which to manifest his approval or disapproval of bills presented to him by the Congress. The question now raised

is whether the case of an adjournment at the end of seven days by the House in which the bill originated, while the other House remains in session, constitutes an exception, so that, regardless of what the President may do thereafter, the bill becomes a law.

I

The first question is whether, assuming that the return of the bill was "prevented" within the meaning of the Constitution, it was "the Congress by their Adjournment" which prevented it. The petitioner contends that this phrase can only be construed as referring to a concurrent adjournment of both Houses of Congress. The use of the plural in the pronominal adjective "their" and the verb "prevent", upon which petitioner relies, is without significance in view of the fact that the usage of the Constitution would have required the plural likewise to be employed in any alternative phrasing, even as applied to a single House of Congress. The Constitution elsewhere illustrates the disjunctive use of the plural "their", referring in the indefinite sense to one or the other House of Congress, as the case may be. Any action taken in pursuance of authority conferred by the Constitution, whether by one of the component branches of Congress or by both, may appropriately be spoken of as action of Congress. If the phrase, "unless the Congress by their Adjournment prevent", be understood in this inclusive sense, there

is no difficulty in concluding in this case that "the Congress by their Adjournment prevent[ed the] Return" of the bill when the only House to which it could have been sent, exercising a power authorized by Article I to be exercised separately, rendered itself incapable of receiving it.

Under the view urged by the petitioner, a single House of Congress would be enabled to reduce from ten to seven days the time within which the President's power of veto can be exercised. Such a result the Constitution plainly forbids. *The Pocket Veto Case,* 279 U. S. 655, 675. By obtaining the consent of the other House, the House of origin, indeed, might adjourn for ten days and so take away the power of veto altogether. The powers of the executive and legislative branches of the Government were intended to function harmoniously. To carve out an exception to the established doctrine protecting the President's power of veto from destruction or impairment by Congress would be to deny accepted canons of constitutional interpretation and to subtract much of the meaning from this Court's express declarations concerning the scope of the power.

II

This Court in *The Pocket Veto Case, supra,* at pp. 680–685, held that an adjournment of the first session of a Congress "prevented" the return of a bill, saying that "the 'House' to which the bill

is to be returned, is the House in session." It is not clear that this holding applies to an adjournment by a single House for a period constitutionally limited to three days. The return of a bill to a permanent officer of the House in such a case involves no violation of the purpose of the Constitution that the status of a bill should not be kept in prolonged uncertainty and that reconsideration by the Congress in the light of the President's objections should be immediate. This, however, is a question as to whether the bill should be held not to have become a law because of a so-called pocket veto, or because of the failure of Congress to reconsider it and pass it over the President's veto. It is plain in any event that the bill did not become a law in the absence of either one of the alternative safeguards against improvident legislation provided by the Constitution—the approval of the President or reconsideration by Congress pursuant to a procedure of special solemnity.

III

The ten executive precedents occurring in the administrations of Presidents Cleveland and Wilson are not persuasive. They disclose no long-settled and established practice. In the present case, before any controversy arose, the practice was assumed to be the contrary both by Congress and the President.

ARGUMENT

The argument for the petitioner seeks to establish, in effect, that there is a *hiatus* in the provisions of the Constitution [1] giving to the President ten days (Sundays excepted) within which to manifest his approval or disapproval of bills presented to him by the Congress. The importance of the opportunity for deliberation afforded by these provisions, this Court has repeatedly emphasized. *The Pocket Veto Case,* 279 U. S. 655, 677, 678;

[1] Clause 2, Section 7, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part I, p. 32), provides:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

Edwards v. *United States,* 286 U. S. 482, 493, 494. The terms of the Constitution and the Court's decisions make plain that *at least in every other situation* than the one here presented the opportunity exists unimpaired. The question presented is whether the situation now before the Court constitutes an exception.

(1) When both Houses of Congress remain in session for ten days after presentation of a bill, no question, of course, has ever arisen as to the President's power either to approve or to disapprove the bill within the ten days provided by the Constitution. Approval—the Constitution makes clear—may be manifested at any time within the designated period by the signing of the bill; disapproval, by its return with a written statement of objections to the House in which it originated. Failure of the President to take either of these affirmative courses of action results in the bill becoming a law without his approval.

(2) When one or both Houses has adjourned, it is no longer open to question that the President retains for the full ten-day period the power to *approve* the bill. That the President may sign a bill during a short recess of Congress was settled in *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423. And in *Edwards* v. *United States,* 286 U. S. 482, it was determined that his approval was likewise effective although it was given after the final adjournment of Congress.

(3) When both Houses have adjourned, whether with or without day, the President is similarly empowered to make his *disapproval* effective. In the case of a final adjournment this has never been disputed; the Constitution expressly saves the President from the necessity of cutting short his deliberation and declaring his disapproval at once in order to declare it at all. The bill—it says—is not to become a law wherever "the Congress by their Adjournment prevent its Return." In *The Pocket Veto Case,* 279 U. S. 655, the Court held that this language applies to adjournment merely for the session as well as to final adjournment of the Congress. That it applies also to shorter adjournments of the whole Congress, the opinion in that case leaves little doubt.

The argument here made is that the case of adjournment by the House in which a bill originated, while the other House remains in session, constitutes the single break in the uniformity of this constitutional scheme. Under such circumstances, it is urged, the power of the President to disapprove a bill at any time within the ten-day period is dependent upon the willingness of the originating House to remain in session. In its uncontrolled discretion, that House—if the argument be accepted—may adjourn for three days,[2] and so

[2] Section 5, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part I, p. 31), provides: SEC. 5. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a

reduce to seven days, as it is claimed to have done here, the opportunity for deliberation provided by the Constitution. If it may do so much, no reason appears why it may not by successive adjournments, commencing on the day the bill is presented, destroy the opportunity altogether—subject only to the possibility that the President's messenger may succeed in catching it in a brief moment of session before readjournment. Indeed, if it is the fact of session by the other House which is decisive, the argument goes to the extent of permitting the originating House to adjourn with the consent of the other for the entire period and so to prevent any exercise of the veto power whatever.

The asserted existence of such an exception to the general scheme of the Constitution is difficult to reconcile with the language which this Court has used in describing the nature and importance of the President's opportunity for deliberation. Thus, in *Edwards* v. *United States, supra,* the Court said (pp. 493, 494):

> Regard must be had to the fundamental purpose of the constitutional provision to provide appropriate opportunity for the President to consider the bills presented to

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Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day * * *.

Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

> him. The importance of maintaining that opportunity unimpaired increases as bills multiply. The Attorney General calls attention to the fact that at the time here in question, that is, between February 28, 1931, and noon of March 4, 1931, 269 bills were presented to the President for his consideration, 184 of which were presented to him during the last twenty-four hours of the session. No possible reason, either suggested by constitutional theory or based upon supposed policy, appears for a construction of the Constitution which would cut down the opportunity of the President to examine and approve bills merely because the Congress has adjourned. No public interest would be conserved by the requirement of hurried and inconsiderate examination of bills in the closing hours of a session, with the result that bills may be approved which on further consideration would be disapproved, or may fail although on such examination they might be found to deserve approval.

Again, in *The Pocket Veto Case, supra,* it was said (pp. 677, 678):

> * * * The faithful and effective exercise of this momentous duty necessarily requires time in which the President may carefully examine and consider a bill and determine, after due deliberation, whether he should approve or disapprove it, and if he disapproves it, formulate his objections for the consideration of Congress. To that end a specified time is given, after the bill

> has been presented to him, in which he may examine its provisions and either approve it or return it, not approved, for reconsideration. See *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, 455. *The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly.* And it is just as essential a part of the constitutional provisions, guarding against ill-considered and unwise legislation, that the President, on his part, should have the full time allowed him for determining whether he should approve or disapprove a bill, and if disapproved, for adequately formulating the objections that should be considered by Congress, as it is that Congress, on its part, should have an opportunity to re-pass the bill over his objections. [Italics supplied.]

The italicized sentence in *The Pocket Veto Case* had reference to the possibility of joint action by both Houses of Congress narrowing or cutting down the stated power of the President. More specifically, it referred to such action putting an end to the session. Such an adjournment is not likely to be taken as readily as a mere temporary recess. And joint action by both Houses is likely to be more responsible, better considered action, than action by either House alone. There is greater danger, accordingly, of encroachment upon the President's power of disapproval in the fashion here in question than in the fashion which the

Court was there considering. It would be strange if the Constitution, while guarding the President's power against the lesser danger, had left it exposed to the greater.

The argument that the power is so exposed depends upon a dual proposition. The Constitution provides two methods by which the President may make effective his disapproval of a bill—*first,* by returning it with his objections to the House in which it originated; and, *second,* where "the Congress by their Adjournment prevent its Return" by simply failing to sign it. Ordinarily these two methods complement each other, so that the unavailability of the one implies the availability of the other, and *vice versa.* In this special case, however, it is urged that neither was available. The President, it is said, could not return the bill to the Senate, where it originated, because the Senate by its adjournment had prevented its return. For this first aspect of the proposition, the petitioner relies upon *The Pocket Veto Case, supra.* Yet the President—the contention also is—could not make his disapproval effective by the second method, for while the return was "prevented" it was the Senate and not "the Congress" which prevented it. For this second aspect of the proposition, the petitioner relies upon a literalistic interpretation of the terms of the Constitution itself, supported by ten instances of executive interpretation during the administrations of President Cleveland and President Wilson.

Both aspects of the proposition advanced by the petitioner are presented by the case at bar. For the President, in the effort to make effective his disapproval of the bill, attempted to resort to both of the methods authorized by the Constitution. He sought to return the bill to the Senate by delivering it, together with a written statement of his objections, to the Secretary of the Senate. At the same time, in refusing to sign the bill, he made possible the operation of the alternative or complementary constitutional provision.

In the opinion of the Government, the petitioner is probably correct in concluding that the attempted return of the bill to the Senate was ineffectual. This we think is so, however, only if the other method of making effective the President's disapproval was operative. What is clear, above all, is that—by whatever method to be exercised—the power of veto existed, and existed with full opportunity for deliberate, unhurried consideration during the allotted period.[3]

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[3] As this Court said in *The Pocket Veto Case*, 279 U. S. at 675, 676, decisions of state courts construing state constitutional provisions—"due in some part to differences in phraseology or their application to the procedure of the state legislatures"—furnish no substantial aid in the determination of such questions as that here presented. We have been unable to find any such decision, however, adopting a construction which would have the effect here contended for of curtailing or nullifying the executive's power of veto. Compare *Harpending* v. *Haight*, 39 Cal. 189; *State* v. *South Norwalk*, 77 Conn. 257; *People* v. *Hatch*, 33 Ill. 9, 129, 134, 135; *Tuttle* v. *Boston*, 215 Mass. 57, 58–61; *Wood* v. *State*

I

The question first to be considered is whether, assuming that the return of the bill was "prevented" within the meaning of the Constitution, it was "the Congress by their Adjournment" which prevented it.

1. The petitioner urges the impossibility of a disjunctive interpretation of the collective noun "Congress" and the possessive adjective "their".[4]

Administrative Board, 255 Mich. 220, 227–233; *State ex rel. Putnam* v. *Holm*, 172 Minn. 162; *Soldiers Voting Power*, 45 N. H. 607, 610; *In re Public Utilities Board*, 83 N. J. L. 303; *Corwin* v. *Comptroller General*, 6 S. C. 390; *May* v. *Topping*, 65 W. Va. 656, cited by the petitioner, arose under special constitutional provisions relating to the item veto in appropriations.

In *In re Public Utilities Board*, *supra*, the Supreme Court of New Jersey, construing provisions substantially identical with those of the Federal Constitution, said (p. 312):

"The manifest purpose of the provision is to prevent the legislature, by an adjournment of more than five days, from putting it out of the power of the governor within that period to take advantage of his constitutional right—to fulfill the constitutional duty imposed upon him; and we consider the purpose manifest, notwithstanding that the language used in the constitution is 'unless the legislature', and so forth, instead of 'unless the house of origin', and so forth, for, as it is the adjournment of the house of origin alone, and not of both branches of the legislature, which prevents executive action, the necessary inference is that the words 'the legislature' are used in this connection as synonymous with 'the house of origin.'"

[4] The disjunctive use of both these terms is by no means uncommon. This Court in *Jurney* v. *MacCracken*, 294 U. S. 125, 148, referred to the action of the House of Representatives in punishing for contempt as an act of "Con-

He thus tenders an issue of grammar and the dictionary meaning of words. Even if the question could properly be decided solely upon this footing, the case for the petitioner would be at best uncertain.

The petitioner's first clear error lies in the significance which he attaches to the use of the plural in the adjective "their" and the verb "prevent". Brief for the Petitioner, 9, 10. He assumes that the antecedent of "their" is the "Senate and House of Representatives", the two parts of which—in the words of the Constitution—"the Congress of the United States * * * shall consist". Thus he interprets the provision in question as if it read, "unless the Senate *and* the House of Representatives, acting concurrently, by *their* Adjournment prevent" the return of the bill, and as if this meaning were to be contrasted with a meaning not intended, "unless the House in which the Bill shall have originated by *its* Adjournment prevents" the return of the bill.

It is well to attribute to the framers of the Constitution "careful diction" (Brief, 10), but it is necessary to remember that the diction is that of the eighteenth and not the twentieth century. In

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gress". Again, in *Kilbourn* v. *Thompson*, 103 U. S. 168, 194, a resolution of the House of Representatives was similarly described. The word "their" has likewise been interpreted on occasion in the disjunctive as well as the conjunctive sense. *Luce* v. *Harris*, 79 Pa. 432; *Lehman* v. *Lehman*, 215 Pa. 344; *Stegler's Exec.* v. *Stegler*, 77 Va. 163; *Pape* v. *Pape*, 67 Ind. App. 153.

referring to a collective body in the definite sense (*the* Congress, *the* Senate, *the* House of Representatives or *that* particular House), the Constitution invariably uses the plural, the connotation being, of course, to the members of the body. Accordingly, even if the Constitution had spoken of the particular House in which the bill originated, it would still have used the plural—"unless that House by their Adjournment prevent its Return". This is manifest from another sentence in the very section under consideration:

> If he approve he shall sign it [the bill], but if not he shall return it, with his Objections to that House in which it shall have originated, *who* shall enter the Objections at large on *their* Journal, and proceed to reconsider it.

The most that can be urged in the petitioner's favor from the use of the plural in the provision in question is that it is ambiguous. The connotation may be simply to the individual members of the Congress or it may be to the two Houses. In either case, since in an alternative phrasing the singular would in no event have been appropriate, the plural may be read with equal ease disjunctively as conjunctively.

There is, indeed, reason to believe that it may be so read with greater ease. A further aspect of constitutional usage in the application of pronominal adjectives to collective nouns must be taken into account. The singular "its" is used repeat-

edly in the Constitution with reference to a House of Congress.[5] Yet, as already noted, the plural also is used.[6]

The diction of the Constitution in the respect under discussion is evidently either the very opposite of "careful", in which event no inference can be drawn from it, or else it proceeds according to a practice of considerable nicety. The latter would appear to be the true case. For if the instances given be compared, it will be seen, as already suggested, that the plural is used when the reference is to a House in the definite sense and the

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[5] Section 5, Article I, of the Constitution of the United States (U. S. C. A. Constitution, Part I, p. 31) provides, *inter alia:*

"Each House shall be the Judge of the Elections, Returns and Qualifications of *its* own Members * * *.

"Each House may determine the Rules of *its* Proceedings, punish *its* Members for disorderly Behaviour * * *.

"Each House shall keep a Journal of *its* Proceedings * * *."

[6] Section 3, Article I, of the Constitution of the United States (U. S. C. A. Constitution, Part I, pp. 30, 31) provides, *inter adia:*

"The Senate of the United States shall be composed of two Senators from each State * * *.

"Immediately after *they* shall be assembled in consequence of the first Election, *they* shall be divided as equally as may be into three Classes * * *.

"The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless *they* be equally divided.

"The Senate shall chuse *their* other Officers * * *."

The last example, which is not unique, rules out any suggestion that the plural is employed when the emphasis is upon the individual members and the singular when the ref-

singular when the reference is to a House in the indefinite sense.

This practice raises the problem of the appropriate number when the desired reference is to more than one House—one or the other—in the indefinite sense. The natural solution would be to use the plural again, thus giving it a dual function. This appears to be precisely the usage which the Constitution follows. The single most striking instance of pronominal number in the Constitution affords the confirmation.

> Each House shall keep a Journal of *its* proceedings, and from time to time publish the same, excepting such parts as may in *their* Judgment require secrecy * * *

Manifestly the "Judgment" intended is not the concurrent judgment of both Houses. The sense, in current usage, would hence have been the same if the singular "its" had been used, as it was in the clause immediately preceding. Nor is explanation possible, as already pointed out,[7] on the ground that the journal is that of the collectivity but the judgment that of the individual members. The word "their" signifies unmistakably not one House but either the one House or the other, depending upon whose proceedings it is the publication of which is in question.

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erence is to the collectivity. The individual members of the Senate do not have officers, nor do they have a journal (see p. 17, *supra*).

[7] See note 6, *supra*.

The clause, "unless the Congress by their adjournment prevent its return", can similarly be read as referring to the adjournment of either one of the component parts of Congress, or of the concurrent adjournment of both parts, depending likewise upon whose adjournment is in question.

The meaning thus given to the provisions under discussion is a natural and consistent one. The Congress, says the Constitution, "shall consist of a Senate and a House of Representatives." The Constitution gives to the Congress so established certain powers to be exercised concurrently by both Houses and other powers to be exercised separately, by one or the other House. With respect to adjournment, action in certain circumstances is to be concurrent and in others separate—sometimes with and sometimes without the consent of the other. In all cases the action appropriate to the circumstances may appropriately be spoken of as action of the Congress. If the phrase, "unless the Congress by their Adjournment prevent", be understood in this inclusive sense, there is no difficulty in concluding, in the case at bar, that "the Congress by their Adjournment prevent[ed the] Return" of the bill when the only House to which it could have been sent, exercising a power authorized by Article I to be exercised separately, rendered itself incapable of receiving it.

2. So far as the answer by way of grammar falls short of meeting the petitioner's contention conclusively, it does so only because the question pre-

sented is not one of grammar. It is a question of government, a question accordingly to be decided with regard to the overriding intention of the Constitution to establish a rational and workable method of subjecting projected legislation to executive scrutiny.

Viewed in this light, there can be no doubt, we think, that whenever an adjournment "prevents" the return of a bill within the meaning of the Constitution, that adjournment is equally one of "the Congress", within the same meaning, whether it be an adjournment of both Houses acting concurrently, an adjournment of one House acting with the consent of the other, or an adjournment of a single House acting alone.

The case of an adjournment for more than ten days by the House of origin, with the consent of the other, reveals decisively the fallacy of the petitioner's contention. If such an adjournment were to have the effect here urged, Congress would possess power at any time to nullify the President's power of veto—contrary to the plainest intention of the Constitution. Yet the petitioner's argument, if valid in the case at bar, is valid also in the case supposed. It is true that an adjournment by one House with the consent of the other might be said to be action of "the Congress" within the meaning which petitioner seeks to give that term. But still it would not be Congress "by their adjournment" which had prevented the re-

turn of the bill, but only Congress by the adjournment of a single House.

Extensible or not, the petitioner's view even as confined to the situation presented in the case at bar is destructive of the relationship between the Executive and Legislature contemplated by the Constitution. The Constitution contemplates that the President shall have ten days, and not seven, within which to determine whether to approve or disapprove a bill.[8] Not only would the petitioner's view, if accepted, in effect bring about a reduction of the period provided, but it would necessitate the exercise of excessive diligence by the President if he desired to veto a bill within even this reduced period. This Court's measured statement in *The Pocket Veto Case, supra* (p. 677) may here appropriately be repeated:

> The power [of veto] thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly.

Any other doctrine would be difficult to justify. The powers of the executive and the legislative branches were intended to function harmoniously.

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[8] See *Farrand's Record of the Federal Convention*, Vol. 2, Journal, pp. 295, 296, Wednesday, August 15, 1787:

"It was moved and seconded to strike out the word 'seven' and insert the words 'ten (Sundays excepted)' in the 13th sect. of the 6 article * * * which passed in the affirmative [Ayes 9, Noes 2]. On the question to agree to the 13th sect. of the 6 article as amended—it passed in the affirmative." Only New Hampshire and Massachusetts voted "no." See also *ibid*, p. 302.

In the respect here in question they admit of an interpretation which will permit them so to function. By that interpretation nothing will be taken away from the usual and the accepted powers of either, and nothing will be added. To carve out an exception whereby Congress would be enabled, on occasion, to destroy or impair the President's usual power of veto would be to deny accepted canons of constitutional interpretation and to subtract much of the meaning from this Court's express declarations concerning the scope of the power.

What has been said is sufficient to dispose of the petitioner's further suggestion (Brief, 13–17) that the veto power, "being in derogation of legislative power", is at all times to be narrowly construed. If the point in question were the possession under special circumstances of a power wider than that understood and recognized in the generality of cases, the suggestion might have force. Under the circumstances at bar, it is in the teeth of this Court's repeated affirmations of the existence of an effective veto power. It is in the teeth also of the expressed determination of the delegates to the Constitutional Convention to endow the Executive with such a power. Elliot's *Debates,* Vol. 5, pp. 151–155, 344–348; Mason, *Veto Power,* p. 20; *Federalist,* No. 73, pp. 337–340; *Farrand, ibid,* Vol. 2, pp. 585–587; Story, *Constitution of the United States,* 4th ed., pp. 622–631; Warren, *The Making of the Constitution,* pp. 185–187, 453–463.

II

The petitioner's conclusion that the effort of the President to return the bill to the Senate was ineffectual is rested shortly (Brief, 5, 6) upon this Court's holding in *The Pocket Veto Case, supra,* at 682, that "the 'House' to which the bill is to be returned, is the House in session." While the conclusion of the petitioner is probably correct, the point—in view of its importance—ought not to pass without consideration.

This Court in *The Pocket Veto Case* was concerned not with an adjournment of a single House for a period constitutionally limited to three days but with an adjournment of a regular session of Congress approximately five months before the prescribed date for the meeting of the next session. It was considering the effect of delivery of a bill with the President's objections to a permanent officer of the House, during such an adjournment, not in a case in which the President had attempted such delivery but in a case in which it was asserted that a bill had become law because of his failure to make the attempt.

In support of its conclusion that such a delivery could not have been made and that an adjournment of a regular session of Congress accordingly prevented the return of the bill, the Court gave the following reasons (pp. 684, 685):

> Manifestly it was not intended that, instead of returning the bill to the House itself, as

required by the constitutional provision, the President should be authorized to deliver it, during an adjournment of the House, to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks or perhaps months—not only leaving open possible questions as to the date on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid. In short, it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, and not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return of the bill to the House had expired.

Some of these reasons may have application to the case at bar. Others have not. If the Secretary of the Senate is wholly without authority to receive the bill and make a legislative record thereof, or if such authority could not constitutionally be given even in a situation not offending the substance of the constitutional purpose, then further discussion of the question is foreclosed. It is to be noted, however, that the first point, as to authority in fact, was dealt with by the Court only as a reason "aside from" the principal constitutional reason (p. 684); and that there are strong grounds for concluding that the authority does exist wherever it can be constitutionally conferred. See Argument of Amicus Curiae, 279 U. S. 666, 669–671. The original delivery of a bill to the President, of course, is frequently constructive. If then the primary objection in *The Pocket Veto Case* was a constitutional one, a different conclusion may well be reached in the case at bar, for the applicable constitutional considerations differ materially. There is here no danger of keeping a bill for an uncertain period "in a state of suspended animation", contrary to the design of the Constitution that its status be readily ascertainable. No possibility is involved of material delay in determining the fact or the date of delivery. Nor will Congress be prevented from proceeding immediately, as the Constitution intended, with its reconsideration of the bill.

Much of the petitioner's argument in the fourth section of his brief (pp. 13–17) is persuasive, if at

all, only of the view that the return of the bill to by the President was effectual and that Congress was not disabled from proceeding to its reconsideration. For "derogation of legislative power", if any, would result from such disability, not from upholding the power of the President to exercise his veto with the same opportunity for deliberation as in ordinary cases. Where a session of Congress is interrupted only by a brief adjournment of one House for a period to which the Constitution itself sets a maximum, it may well be thought that the exceptional power of final non-approval [9] ought not to exist, and that the power of disapproval should be checked, as in ordinary cases, by an opportunity for the legislative branch to consider the formulated objections of the Executive and by a special majority to override them.

The petitioner's positions upon the point here in question and that previously considered (pp. 15–23, *supra*) will be seen upon examination to be self-defeating. The veto provisions of the Constitution are designed to afford alternative safeguards against the enactment of improvident legislation.

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[9] The Court in *The Pocket Veto Case* referred (p. 676) to "a silent and 'absolute veto', that is, a so-called pocket veto, which neither discloses his [the President's] objections nor gives Congress an opportunity to pass the bill over them." As the Court pointed out (pp. 676–679), the term "pocket veto" is inapt to the extent that it fails to recognize that the failure of the bill may be attributable as well to the President's lack of time for examination and deliberation while Congress is in session, as to affirmative disapproval.

Where the President approves a bill—or, more accurately, where after full opportunity for deliberation he fails to disapprove it—the bill is to become a law. In the alternative, despite the President's disapproval, it is to become a law where the Congress by a prescribed and specially solemn procedure has reviewed the President's objections and determined that they should be overridden. When such reconsideration is clearly impossible, the Constitution declares expressly that the absence of the first safeguard shall be decisive—the failure of the President to give his approval results in the bill not becoming a law. Whether this result shall follow even though the impediment to reconsideration by Congress is the slight one of a temporary and limited adjournment by a single House, or whether Congress remains empowered to reconsider the bill, is a difficult question. That, however, is merely a question as to the availability of the alternative constitutional safeguard. The petitioner's contention, on the other hand, is that under these special circumstances the bill is to become a law in the absence of either of the safeguards provided by the Constitution. The question thus presented, we submit, is not one of difficulty. The contention is contrary to the plain intendment of the Constitution.

III

The petitioner cites (Brief, 17–21) in support of his contention nine instances of executive inter-

pretation occurring in the administration of President Cleveland and one occurring in the administration of President Wilson. The precedents are not persuasive. Four points are to be noted concerning them. Nine of the instances antedated all the decisions of this Court concerning the scope of the veto power and the tenth antedated all but one (*La Abra Silver Mining Co.* v. *United States, supra*). All of them are reconcilable only with difficulty, if at all, with those decisions. In none of the instances, moreover, does it appear that the President affirmatively disapproved the bill. Certainly he did not evidence his disapproval, and the question here involved as to whether the power of veto can be curtailed by the adjournment of a single House accordingly was not presented. Nor can it be said that the instances in question disclose any long-settled or established practice. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 473; *United States* v. *Minnesota*, 270 U. S. 181, 205; *The Pocket Veto Case*, 279 U. S. 655, 689. Where instances which might constitute precedents seldom occur, and are not subjected to the scrutiny of successive executive officers or of the courts, their value is minimized. So far was the practice in this case from being established in the petitioner's favor that it was assumed both by Congress and the President to be the contrary. The Senate, when the President's disapproval was communicated to it, took cognizance thereof and referred

the bill to the Claims Committee (R. 3). No further action was taken; and the bill never was treated as having become law. Finally, the ultimate question, as the petitioner himself points out (Brief, 21), is not what Congress and the President thought, but what the Constitution provides. The Constitution does not contemplate that the President's power of veto can be curtailed, or the opportunity for deliberation in advance of its exercise cut short, in such fashion as the contention of the petitioner would permit.

CONCLUSION

We respectfully submit that the decision of the court below is correct and that its judgment should be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1937.

David A. Wright, Petitioner,
vs.
The United States.

On Writ of Certiorari to the Court of Claims.

[January 17, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The question is whether Senate Bill 713, 74th Congress, 1st session, which was passed by both Houses of Congress, became a law.

The bill was presented to the President of the United States on Friday, April 24, 1936. It had originated in the Senate. On Monday, May 4, 1936, the Senate took a recess until noon, Thursday, May 7, 1936. The House of Representatives remained in session. On May 5, 1936, the President returned the bill with a message addressed to the Senate setting forth his objections. The bill and message were delivered to the Secretary of the Senate. When the Senate reconvened on May 7, 1936, the Secretary advised the Senate of the return of the bill and the delivery of the President's message.[1] On the same day the President of the Senate laid before

[1] This communication was as follows:

"United States Senate.
Washington, May 7, 1936.

Hon. John N. Garner,
President of the Senate.

My dear Mr. President:

On Friday, April 24, 1936, the Committee on Enrolled Bills of the Senate presented to the President of the United States the enrolled bills (S. 713) granting jurisdiction of the Court of Claims to hear the case of David A. Wright, and (S. 929) for the relief of the Southern Products Co., which had passed both Houses of Congress and been signed by the Speaker of the House of Representatives and the President of the Senate.

The Senate, at 3:25 p. m. Monday, May 4, 1936, took a recess until 12 noon on Thursday, May 7, 1936.

During the interim the President of the United States sent by messenger two messages addressed to the Senate, each dated May 5, 1936, giving his reasons for not approving, respectively, Senate bill 713 and Senate bill 929. The Senate not being in session on the last day which the President had for the return of these bills under the provisions of the Constitution of the United States, in order to protect the interests of the Senate, so that it might have the opportunity to reconsider the bills, I accepted the messages, and I now present to you the President's veto messages, with the accompanying papers, for disposition by the Senate.

Sincerely yours,
Edwin A. Halsey,
Secretary of the Senate".

it the Secretary's letter and the message of the President of the United States. The message was read and with the bill was referred to the Senate Commitee on Claims. No further action was taken.

The bill granted jurisdiction to the Court of Claims to rehear and adjudicate petitioner's claim against the United States. Accordingly on September 14, 1936, petitioner presented his petition to the Court of Claims. The Government opposed the petition upon the ground that the bill had never become a law and the Court of Claims denied the petition. In view of the importance of the question certiorari was granted. 301 U. S. 681.

The applicable provisions of the Constitution are found in Article I, Section 7, Paragraph 2, which provides:

"Every Bill which shall have passed the House of Representatives and the Senate, shall before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law".

1. The first question is whether "the Congress by their adjournment" prevented the return of the bill by the President within the period of ten days allowed for that purpose.

"The Congress" did not adjourn. The Senate alone was in recess. The Constitution creates and defines "the Congress". It consists "of a Senate and House of Representatives". Art. I, Sec. 1. The Senate is not "the Congress".

The context of the clause itself points the distinction. It speaks of the "House of Representatives" and of the "Senate", respectively. It speaks of the return of the bill, if the President does not approve it, "to that House in which it shall have originated"; of

reconsideration by "that House", and, in case two thirds of "that House" agree to pass the bill, of sending it together with the President's objections to the "other House" and, if approved by two thirds of "that House", the bill is to become a law. Provision is made for the taking of the votes of "both Houses" and for the recording of the names of those voting for and against the bill on the Journal "of each House respectively".

Then, after this precise use of terms and careful differentiation, the concluding clause describes not an adjournment of either House as a separate body, or an adjournment of the House in which the bill shall have originated, but the adjournment of "the Congress". It cannot be supposed that the framers of the Constitution did not use this expression with deliberation or failed to appreciate its plain significance. The reference to the Congress is manifestly to the entire legislative body consisting of both Houses. Nowhere in the Constitution are the words "the Congress" used to describe a single House.

To disregard such a deliberate choice of words and their natural meaning would be a departure from the first principle of constitutional interpretation. "In expounding the Constitution of the United States", said Chief Justice Taney in *Holmes* v. *Jennison*, 14 Pet. 540, 570, 571, "every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood". See, also, *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 333, 334; *Ogden* v. *Saunders*, 12 Wheat. 213, 316; *Myers* v. *United States*, 272 U. S. 52, 151; *Williams* v. *United States*, 289 U. S. 553, 572, 573.

The argument addressed to the word "their" in the phrase "the Congress by their adjournment", is futile. The argument is that the use of the plural would not be unusual or inappropriate if the reference were to a single House. There is no question that both singular and plural forms are used in the Constitution with reference to each House separately. See Article I, Section 3, Paragraphs 2, 4, 5, 6; Article I, Section 5, Paragraphs 1, 2, 3. The plural is

used in the phrase "their Journal" in the paragraph under consideration. But the question is not whether the use of the plural is inappropriate in referring to a single House or its members. It it sufficient to say that there is certainly no inappropriateness in the use of the plural in relation to "the Congress" as composed of both Houses, and that use in no way changes the significance of that term.

The phrasing of the concluding clause is entirely free from ambiguity and there is no occasion for construction.

2. The argument to the contrary rests upon the premise that a bill cannot be returned by the President to the House in which it originated when that House during the session of Congress is in recess, and hence that the concluding elause of Paragraph 2 of Section 7 of Article I, referring to an adjournment by the Congress, should be rephrased by judicial construction in order to deal with that situation. We think that the premise is faulty and the rephrasing inadmissible.

Paragraph 4 of Section 5 of Article I provides:

"Neither House, during the Session of Congress shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting".

It will be observed that this provision is for a short recess by one House without the consent of the other "during the Session of Congress". Plainly the taking of such a recess is not an adjournment by the Congress. The "Session of Congress" continues.

Here, the recess of the Senate from May 4th to May 7th was during the session of Congress and under that provision. In returning the bill to the Senate by delivery to its Secretary during the recess there was no violation of any express requirement of the Constitution. The Constitution does not define what shall constitute a return of a bill or deny the use of appropriate agencies in effecting the return.

Nor was there any practical difficulty in making the return of the bill during the recess. The organization of the Senate continued and was intact. The Secretary of the Senate was functioning and was able to receive, and did receive, the bill. Under the constitutional provision the Senate was required to reconvene in not more than three days and thus would be able to act with reasonable promptitude upon the President's objections. There is no greater difficulty in returning a bill to one of the two Houses when

it is in recess during the session of Congress than in presenting a bill to the President by sending it to the White House in his temporary absence. Such a presentation is familiar practice. The bill is sent by a messenger and is received by the President. It is returned by a messenger, and why may it not be received by the accredited agent of the legislative body? To say that the President cannot return a bill when the House in which it originated is in recess during the session of Congress, and thus afford an opportunity for the passing of the bill over the President's objections, is to ignore the plainest practical considerations and by implying a requirement of an artificial formality to erect a barrier to the exercise of a constitutional right.

These practical considerations were well put by Mr. Hatton W. Sumners in his argument as *amicus curiae* on behalf of the Committee on the Judiciary of the House of Representatives in the *Pocket Veto Case,* 279 U. S. 655. He said:

"There is no language in the provision governing this passing of bills between the President and Congress, or any recognized rule of construction which, while permitting the Congress in the first instance to send bills to the President by a messenger, as is done without question, and the President to receive such bills through an appropriate agent even when himself absent from his office; and the President, though he may be away from the Capital, at the time returning the bill by messenger to the Congress, though the Constitution declares 'he', the President, shall return it, which would prevent the House of origin from receiving these same bills through a proper agent if that House were engaged in other business or temporarily absent from their Chambers. It is against all reason and every recognized rule of construction, when the avoidance of unnecessary delay is so clearly manifest in the provision sought to be construed, that a construction should be superimposed which would make for delay regardless of every desire and of every effort of the President and of the Congress in the situation indicated".

And referring to the provision of the Constitution above quoted as to adjournments by either House for not more than three days during the session of Congress, he said:

"In such a situation what is to occur? Is the bill to become a law despite the objections of the President? The Congress has not adjourned, and yet the President cannot make return of the bill to the House of its origin in session because it is not in session. Is the bill to die with the Congress in existence, possibly the House of origin only having adjourned earlier than usual on the last day

permitted for the return of the bill? Is there no rational construction of the Constitution possible which will make effective all the safeguards with regard to legislation established in the Constitution, and yet make operative under every circumstance, the general plan set up by the Constitution?''

And, again, with respect to the agencies of the Houses of Congress, Mr. Sumners observed that ''The Houses of Congress have officers and agents of great power and responsibility who act in their stead, and who are constantly in their places when the Houses are in session, and when they are not in session''. He found ''nothing in the Constitution which denies the right to the use of these agents in effecting the return of objected-to bills''. He added that

''a rule of construction or of official action which would require in every instance the persons who constitute the Houses of Congress to be in formal session in order to receive bills from the President would also require the person who is President personally to return such bills. . . . . .

''The right of constructive delivery is necessarily not only to facilitate legislative procedure, prevent delay, and to hold the President's powers within the limits imposed by the Constitution, but it is also necessary in order to hold the Congress within proper bounds by preventing bills to which the President may object from becoming law without reconsideration by the Congress.

''The adjournment of a House for not more than three days, without the consent of the other House is not an adjournment of Congress.

''If the Senate should be in executive session, on a matter of the highest public importance, refusing to be interrupted, on the last day of the period in which return may be made, that would not even be an adjournment of one House of the Congress; and yet return could not be made if constructive delivery is not permitted.

''It could not be held that Congress was adjourned when the Senate was in executive session performing its constitutional duty, and the other House in actual session. The sensible thing to do in such a case, would be for the messenger of the President, finding himself unable to make delivery to the Senate, to make the delivery to the Secretary of the Senate. There is nothing in the Constitution to prohibit that being done''.

The absence of any practical obstacle to the return of a bill when a House is in temporary recess during the session of the Congress is illustrated by what was done in this instance The Senate was in recess from May 4th to noon of May 7th. The President's time for consideration expired on May 6th. He delivered the bill with his objections to the Secretary of the Senate on May 5th. The

Secretary presented the bill with the President's objections to the President of the Senate on May 7th and on that day the bill and the objections were laid before the Senate and were referred to the appropriate committeee. The fact that Mr. Sumners' contention in the *Pocket Veto Case* was unavailing with respect to the effect of an adjournment of the Congress at the close of its first regular session, in no way detracts from the pertinence and cogency of these observations as addressed to the situation which is now presented.

3. The chief, if not the sole, reliance for the argument that the bill could not be returned by the President during the Senate's recess is our decision in the *Pocket Veto Case, supra.* We do not regard that decision as applicable for two reasons: (1) the present question was not involved, and (2) the reasoning of the decision is inapposite to the circumstances of this case.

In the *Pocket Veto Case,* the Congress had adjourned. The question was whether the concluding clause of Paragraph 2 of Section 7 of Article I was limited to a *final* adjournment of the Congress or embraced an adjournment of the Congress at the close of the first regular session. The Court held that the clause was not so limited and applied to the latter. In interpreting the word "adjournment", and in referring to other provisions of the Constitution using the word "adjourn", the Court was still addressing itself to a case where there had been an adjournment by the Congress. The Court did not decide, and there was no occasion for ruling, that the clause applies where the Congress has not adjourned and a temporary recess has been taken by one House during the session of Congress. Any observations which could be regarded as having a bearing upon the question now before us would be taken out of their proper relation. The oft-repeated admonition of Chief Justice Marshall "that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used", and that if they go "beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision", has special force in this instance. *Cohens* v. *Virginia,* 6 Wheat. 264, 399.

In the *Pocket Veto Case* the Court expressed the view that the House to which the bill is to be returned "is the House in session", and that no return can be made to the House when it is not in

session as a collective body and its members are dispersed. But that expression should not be construed so narrowly as to demand that the President must select a precise moment when the House is within the walls of its Chambers and that a return is absolutely impossible during a recess however temporary. Such a conclusion, as we shall presently endeavor to show, would frustrate the fundamental purposes of the constitutional provision as to action upon bills. The Court in the *Pocket Veto Case* was impressed with the impropriety of a delivery of the bill by the President during a period of adjournment "to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks or perhaps months,—not only leaving open possible questions as to the day on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid". "In short", said the Court, "it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown on the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return to the House had expired". *Id.*, pp. 684, 685.

These statements show clearly the sort of dangers which the Court envisaged. However real these dangers may be when Congress has adjourned and the members of its Houses have dispersed at the end of a session—the situation with which the Court was dealing—they appear to be illusory when there is a mere temporary recess. Each House for its convenience, and during its session and the session of Congress, may take, and frequently does take, a brief recess limited, as we have seen, in the absence of the consent of the other House, to a period of three days. In such case there is

no withholding of the bill from appropriate legislative record for weeks or perhaps months, no keeping of the bill in a state of suspended animation with no certain knowledge on the part of the public whether it was seasonably delivered, no causing of any undue delay in its reconsideration. When there is nothing but such a temporary recess the organization of the House and its appropriate officers continue to function without interruption, the bill is properly safeguarded for a very limited time and is promptly reported and may be reconsidered immediately after the short recess is over. The prospect that in such a case the public may not be promptly and properly informed of the return of the bill with the President's objections, or that the bill will not be properly safeguarded or duly recorded upon the journal of the House, or that it will not be subject to reasonably prompt action by the House, is we think wholly chimerical. If we regard the manifest realities of the situation, we cannot fail to see that a brief recess by one House, such as is permitted by the Constitution without the consent of the other House, during the session of Congress, does not constitute such an interruption of the session of the House as to give rise to the dangers which, as the Court apprehended, might develop after the Congress has adjourned.

4. The constitutional provisions have two fundamental purposes; (1) that the President shall have suitable opportunity to consider the bills presented to him, and (2) that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes. *Edwards* v. *United States,* 286 U. S. 482, 486. We should not adopt a construction which would frustrate either of these purposes.

As to the President's opportunity for consideration, we have held that he may still approve bills and that they will become laws, if he acts within the time allotted for that purpose, although Congress meanwhile has adjourned. *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423; *Edwards* v. *United States, supra.* It is to safeguard the President's opportunity that Paragraph 2 of Section 7 of Article I provides that bills which he does not approve shall not become laws if the adjournment of the Congress prevents their return. *Edwards* v. *United States, supra.*

Where the President does not approve a bill, the plan of the Constitution is to give to the Congress the opportunity to consider

his objections and to pass the bill despite his disapproval. It is for this purpose that the time limit for return is fixed. This opportunity is as important as that of the President. But if the return of a bill is impossible during a temporary recess of a House while Congress is in session, either the President may be obliged to cut short the time for his consideration so as to be sure to get his objections before the House while it is within the walls of its Chambers, or, if the President takes the allotted time and attempts to return the bill during the recess, his objections will either be unavailing or the Congress will be denied opportunity to pass upon them. If, as we think, the concluding words of Paragraph 2 of Section 7 are inapplicable then, as Congress has not adjourned, the bill, if not deemed to have been returned, will become a law despite the President's disapproval. Or, if that clause were deemed applicable and the return of the bill be considered to have been prevented by the recess, the bill would not become a law and Congress, although in session, would not be able to pass the bill over the President's objections.

The extremely technical character of the argument which would make impossible the return of a bill because a House has taken a temporary recess is manifest. Suppose the President, who is clearly entitled to his ten days for consideration, sends the bill to the House in which it originated with his objections on the afternoon of the tenth day, but that House has adjourned at noon on that day until the following morning. Then, on the argument now advanced as to the construction of the concluding clause of Paragraph 2 of Section 7, the bill would not become a law and the objections of the President would operate practically as an absolute veto although the Congress was in session and ready to consider his objections. Or if that result does not follow, in the view that the clause does not apply because Congress has not adjourned, then, if the bill is not regarded as returned, it becomes a law although the President has shown his disapproval within the ten days. These difficulties disappear if we dispense with wholly unnecessary technicalities as to the method of return and give effect to realities.

We agree with the Government that the precedents of executive action which have been cited are not persuasive. The question now raised has not been the subject of judicial decision and must be resolved not by past uncertainties, assumptions or arguments, but by the application of the controlling principles of constitutional interpretation.

We are not impressed by the argument that while a recess of one House is limited to three days without the consent of the other House, cases may arise in which the other House consents to an adjournment and a long period of adjournment may result. We have no such case before us and we are not called upon to conjecture as to the nature of the action which might be taken by the Congress in such a case or what would be its effect.

We hold that where the Congress has not adjourned and the House in which the bill originated is in recess for not more than three days under the constitutional permission while Congress is in session, the bill does not become a law if the President has delivered the bill with his objections to the appropriate officer of the House within the prescribed ten days and the Congress does not pass the bill over his objections by the requisite votes. In this instance the bill was properly returned by the President, it was open to reconsideration in Congress, and it did not become a law.

The judgment is

Affirmed.

Mr. Justice CARDOZO took no part in the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1937.

David A. Wright, Petitioner,
vs.
The United States.
} On Writ of Certiorari to the Court of Claims.

[January 17, 1938.]

Mr. Justice Stone.

I agree that the legislation now in question did not become a law, not, as the Court holds, because the bill vetoed by the President was returned to the Senate within the ten-day period or to any person authorized to receive the bill in its behalf, but because the Senate by its adjournment prevented the return and thus called into operation the provision that the bill "shall not be a Law" where adjournment prevents its return to the house in which it originated, within the ten days allowed to the President to sign or disapprove it.[1]

The reasons assigned by the Court for its conclusion seem to me to have no application to the case now before us, and leave in confusion and doubt the meaning and effect of the veto provisions of the Constitution, the certainty of whose application is of supreme importance.

Notwithstanding the cogently reasoned ruling of a unanimous court in *The Pocket Veto Case*, 279 U. S. 655, 682, that the

[1] Article I, § 7, Cl. 2, of the Constitution reads as follows:
"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

"House" to which a bill is to be returned by the President means a house in session, we may assume for present purposes that each house of Congress, by appropriate action, may constitutionally confer upon its secretary, clerk, or some other officer, authority to receive a bill returned to it by the President. But it does not appear that any such authority has ever been conferred on the secretary of the Senate, or that he has hitherto assumed to act in that capacity. In *The Pocket Veto Case* this Court held that in 1926 it had not; and the Senate has since taken no step in that direction, perhaps because of our dictum in that case that such action would be unconstitutional.

The houses of Congress, being collective bodies, transacting their routine business by majority action, are capable of acting only when in session and by formal action recorded in their respective journals, or by recognition, through such action, of an established practice. Since the foundation of the government it has been the settled usage of both houses of Congress to receive messages from the President and bills disapproved and returned by him, when in session. It does not appear that in the past the secretary of the Senate or any other person has assumed to act for either house in receiving a bill returned by the President, and in one recorded instance the secretary of the Senate and its President declined so to act.[2] There has been no action and no usage of either house recognizing the existence of such authority in any one. *The Pocket Veto Case, supra,* 682 *et seq.*

The secretary of the Senate is appointed by that body to serve at its pleasure, and his duties are prescribed by the Senate rules. They give no hint that among these duties is the important function of acting as the Senate in the receipt of bills returned to it by the President during the ten-day period, or retaining them in custody pending its reassembly when the return is during an adjournment. Not only have both houses of Congress failed to designate any person to receive bills returned to them by the President, but

[2] On May 19, 1888, President Cleveland attempted to return a bill to the Senate during an adjournment, by tendering it to the secretary and to the President of the Senate. Both officers rejected the tender, "claiming that the return of said bill and the delivery of said message could only properly be made to the Senate when in actual session." President Cleveland's message, Senate Journal, 50th Cong., 1st Sess.

in one instance they explicitly refused to take such action when it was proposed.[3]

The conclusion seems inescapable that whatever constitutional power the Senate and House may possess to designate an officer to receive in their behalf bills returned by the President, they have not exercised it; the Constitution, which directs that bills shall be returned to the house in which they originate, has made no such designation, and neither the Constitution nor any statute, rule or usage has indicated any person who could so act, or prescribed for any one duties embracing such a function.

In such circumstances delivery of a bill to the secretary of the Senate during its adjournment would seem to be no more a compliance with the constitutional requirement than would its deposit by the President's messenger with the sergeant-at-arms, a doorkeeper, or any other person not clothed with authority or charged with official duty in the premises, who might be induced to receive the bill and undertake to bring it to the attention of the Senate upon reassembly.[4]

Doubts as to the scope and effect of the rule now announced by the Court are multiplied by the intimation that a different rule may be applied in the case of adjournment of either house of Congress, with the consent of the other, for more than three days, and that the present decision can, in some way not disclosed, be distinguished from our ruling in *The Pocket Veto Case,* where the return of a bill to the Senate was held to have been prevented by the adjournment of the Senate, pursuant to concurrent resolution, from July 3rd to November 10th, the House having at the same time adjourned *sine die.* But such an intimation can rest on nothing more substantial than our unwillingness to face the obvious consequences of what is now decided. If it be said that an essen-

[3] In 1868 a bill reported by the Senate Judiciary Committee and passed by majority vote of the Senate, provided for a return of a bill to a house not sitting by delivery of it at the office of the secretary of the Senate or of the clerk of the House, as the case might be. Strong opposition to the bill developed in Senate debate, the bill was not reported out of the Judiciary Committee of the House, and failed of passage. The Pocket Veto Case, *supra,* 686 *et seq.*

[4] The fact that the Senate has taken pains to confer express authority in some instances, by formal resolution, Gilfry, Precedents, 226, 462, by rule, Senate Manual, 1936, 5, 8, 12, 36, or by standing order, *id.* at 128 *et seq.,* persuades that the important power to receive a bill would not be conferred *sub silentio.*

tial difference between the present case and *The Pocket Veto Case* lies in the fact that here the President delivered the bill with his veto message to the secretary of the Senate, and that there he retained it without signing, then the rule which is now announced will, for all practical purposes, expire with its birth. We can hardly assume that a President would invite further Congressional action by a return of a bill with his veto to a secretary or other officer of the house concerned, during its adjournment, if by retention of the bill without signing, he could make the veto absolute.

Again, if it be said that a distinction is to be drawn between adjournment of one house for three days and longer adjournments taken with the concurrence of the other house, no plausible reason can be advanced for saying that the secretary or any other officer of the Senate possesses authority to receive returned bills during a three-day adjournment which he does not possess during a four-day or longer adjournment during a session of Congress. In *The Pocket Veto Case* the Senate adjourned during a session of Congress for four months, the House consenting, but the ten days allowed for consideration of the bill by the President expired the day after adjournment. If the decision in that case is to stand with this it can only be because the secretary in the former lost on the day after adjournment an authority which he retained for a day after adjournment in the latter. If lost, it was either because the adjournment was for longer than three days and was thus one which could not be effected without a concurrent resolution, or because the other house had not remained in session. Such distinctions find as little support in Constitution, laws and Congressional practice, and in reason, as does the proposition that the secretary of the Senate is, by virtue of his appointment as such, clothed with authority to receive in its behalf bills returned by the President.

If in *The Pocket Veto Case* the secretary of the Senate, where the bill originated, had authority after adjournment during the session, to receive it in behalf of the Senate, the adjournment did not prevent the return by the President, and the bill, upon his failure to sign or return it, became law by virtue of the constitutional provision just as did some 173 other bills which, until this moment, have been regarded as dead letters, as they were declared

to be in *The Pocket Veto Case, supra,* 691.[5] If the Court was wrong on that point, its decision was wrong, and in the interests of a definite and precise constitutional procedure in a field where definiteness and precision are of paramount importance, it should now be frankly overruled.

If I am wrong in my conclusion that the President did not in this case return the bill to the Senate by returning it to its secretary during adjournment, then adjournment did not prevent its return, the President's veto became effective, and there is no occasion for the Court to indulge in an academic discussion of what may in other circumstances be the effect of an adjournment alone of the house in which a bill originates, which actually prevents such a return. The pronouncement now made that the President may be so deprived of the veto power ought to be avoided not only because, in my opinion, it is an erroneous interpretation of the Constitution which may have grave consequences, but because it is unnecessary to the decision. If the experience of one hundred and fifty years of constitutional interpretation has taught any lesson, it is the unwisdom of making solemn declarations as to the meaning of that instrument which are unnecessary to decision. They can serve no useful purpose and their only effect may be to embarrass the Court when decision becomes necessary. *O'Donoghue* v. *United States,* 289 U. S. 516, 550; *Humphrey's Executor* v. *United States,* 295 U. S. 602, 626-627. The declaration now made, for the first time,

[5] A memorandum prepared in the office of the Attorney General and transmitted by the President to Congress in 1927, H. Doc. No. 493, 70th Cong., 2d Sess., cites more than 400 bills and resolutions which were passed by Congress and submitted to the President less than ten days before final or interim adjournment of Congress, which were not signed by the President or returned with his disapproval. Of these, 119 were instances in which the adjournment was for a session of Congress as distinguished from its final adjournment. None of these bills or resolutions were placed upon the statute books or treated as having become a law. No attempt appears to have been made to enforce them in the courts, except the law involved in The Pocket Veto Case. It does not appear that in any of these instances either house of Congress has taken any official action indicating that in its judgment any of these bills became laws. See The Pocket Veto Case, *supra,* 690, 691. Examination of the House Calendars shows that in the period since that covered by the Attorney General's memorandum, 54 bills have been pocketed before the end of a Congress with no attempt to return them. This was done twice in the Seventy-first Congress, once in the Seventy-second Congress, twenty-eight times in the Seventy-fourth Congress, and twenty-three times in the First Session of the Seventy-fifth Congress. See also Veto Messages: Record of Bills Vetoed and Action Taken Thereon by the Senate and House of Representatives, Fifty-first Congress to Seventy-fourth Congress, Inclusive, 1889-1936, compiled under the direction of Edwin A. Halsey, Secretary of the Senate (1936).

that the Constitution has left an undefined area in which the veto power cannot be exercised, is the more unfortunate since, in the circumstances, it seems almost certain that the Court will be called upon to reexamine it.

If, on the other hand, I am right in my view that the President was here prevented from returning the bill, we are brought unavoidably to the decision of the question presented by the petition for certiorari and ued at the Bar as the controlling question, whether the President is deprived of the veto power whenever return of a bill within the prescribed ten days is prevented by the adjournment alone of the house in which the bill originated.

The framers, in seeking to establish and preserve the presidential veto, were aware that the originating house, unlike the President who is without incentive to avoid receipt of a bill which he is free to veto, might have the strongest motives to avoid the veto of a bill, if that were possible, by preventing its return or by challenging the fact of its return. They accordingly took care to provide for the return of a bill to the originating house by an act of public notoriety—its delivery to the house in session; and recognizing that return might be prevented by adjournment, they declared that in that case it should not become a law.

The possibility that a return may be prevented by the adjournment of a single house during a session of Congress is not removed by deciding that a secretary or some other officer of the originating house may receive a returned bill during the period of a three-day adjournment. Either house may and does on occasion adjourn for longer periods, with the consent of the other.[6] An adjournment coincident with death or absence of the officer may prevent the return. Whatever authority in the premises the Senate or the House may give to its officer, it may withhold or withdraw. If the dictum now pronounced correctly states the fundamental law, the originating house may shorten the period for the exercise of the veto power or thwart it altogether by the simple expedient of adjournment after withdrawing the supposed authority of any officer to receive the vetoed bill.

This Court has emphasized, as does the language of the Constitution, the great importance of the veto power and the dominating purpose expressed in the constitutional provision that the power shall

[6] Cannon, Precedents, Vol. 8, p. 816.

not be curtailed or the ten days, allowed for its exercise, shortened. *Edwards* v. *United States,* 286 U. S. 482, 486, 493-494; *The Pocket Veto Case, supra,* p. 678. The words make it certain that the only adjournment which can prevent return of a bill by the President is that of the house in which the bill originates and to which, if vetoed, it is to be returned. Continuance in session of the other house does not facilitate return. No more can its adjournment obstruct return. Adjournment by the originating house can alone have the consequence to be guarded against, prevention of return. Hence, it was adjournment of the originating house with which the framers were concerned. There is no reason of which we are aware, and none has been suggested, for supposing that in creating and protecting the veto power they regarded the adjournment *vel non* of the non-originating house as of any consequence, or that they had any thought of leaving the President stripped of the veto power, either by chance or by design, whenever the originating house adjourned without the other. The men who created the framework of our government are not lightly to be charged with such an omission. The charge now made finds its only support in a punctilio of grammar.

" . . . we must never forget, that it is a constitution we are expounding." *McCulloch* v. *Maryland,* 4 Wheat. 316, 407. Its provisions are not to be interpreted like those of a municipal code or of a penal statute, though even the latter is to be read so as not to defeat its obvious purpose, *United States* v. *Raynor,* Nos. 146, 147, decided January 3, 1938, or lead to absurd consequences. *United States* v. *Katz,* 271 U. S. 354, 362. In defining their scope something more is involved than consultation of the dictionary and the rules of English grammar. They are to be read as a vital part of an organic whole so that the high purpose which illumines every sentence and phrase of the instrument may be given effect in a consistent and harmonious framework of government.

The Court has hitherto consistently held that a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored. The phrase "due process" in the Fifth and Fourteenth Amendments has long since been expanded beyond its literal meaning of due procedure. See *Davidson* v. *New Orleans,* 96 U. S. 97; cf. Brandeis, J., concurring in *Whitney* v. *California,* 274 U. S. 357,

373. The term "contract" in the contract clause is not confined literally to the contracts of the law dictionary. *Dartmouth College* v. *Woodward,* 4 Wheat. 518. The prohibition against their impairment has never been taken to be inexorable. *Home Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398, and cases cited at 430 *et seq.* The injunction that no person "shall be compelled in any Criminal Case to be a witness against himself" is not literally applied. *Brown* v. *Walker,* 161 U. S. 591, 595. "From whatever source derived", as it is written in the Sixteenth Amendment, does not mean from whatever source derived. *Evans* v. *Gore,* 253 U. S. 245. See, also, *Robertson* v. *Baldwin,* 165 U. S. 275, 281, 282; *Gompers* v. *United States,* 233 U. S. 604, 610; *Bain Peanut Co.* v. *Pinson,* 282 U. S. 499, 501; *United States* v. *Lefkowitz,* 285 U. S. 452, 467.

But here, regardless of the constitutional purpose and the larger considerations which have usually guided our interpretation of the Constitution as an instrument of government, it is insisted that the phrase "unless the Congress by their Adjournment prevent its Return" cannot be taken to include the adjournment alone of the single house whose adjournment is in every case the only effective means of preventing a return. It is said that the word "Congress" used to describe the body whose adjournment occasions the pocket veto, followed as it is by the plural possessive pronoun "their", can refer only to the two houses comprised in "the Congress" and hence cannot refer to adjournment of a single house. This subordination of the framers' main objective to a meticulously grammatical interpretation of their words is unwarranted. It would hardly be suggested that the command, "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy", (Art. I, § 5, cl. 3) calls for the concurrence of the judgment of all the members of a house, in order to ban publication of a journal: "their Judgment" is obviously that of the controlling part of the membership—that part whose opinion, under applicable rules of congressional procedure, is decisive of the question. A similar analysis based on the purpose and context of the clause now before us demands recognition that the draftsmen were concerned with the adjournment only of that part of the Congress to which return was to be made and whose absence would thus prevent return of a bill by the President. In the light of these dominant facts it seems plain

that in using the words "their Adjournment" the framers referred to any action taken by the members of Congress of either house or both houses, which was effective to prevent return of a bill by the President to the originating house. The very force of the circumstances to which the words are applied gives emphasis to "Adjournment" as that which prevents return, and to "their" as referring to the action of those members of Congress which effects the adjournment. This usage parallels that in the clause requiring the publication of the journals of both houses "excepting such Parts as may in their Judgment require Secrecy." In both instances the significant action, adjournment or the exercise of judgment as the case may be, is that of those members whose action is effective to accomplish the contemplated result—there, prohibition of publication; here, prevention of return to the originating house. Thus read, no word is without appropriate meaning and the clause is consistent both with the obvious purpose and with the grammatical usage appearing elsewhere in the Constitution.

I cannot ignore that purpose and say that for no discernible reason other than our present-day notions of grammatical construction we are compelled to read the words as excluding from the operation of the clauses designed to protect the veto power, every case where the return of a bill is prevented by adjournment of a single house.

Mr. Justice BRANDEIS concurs in this opinion.